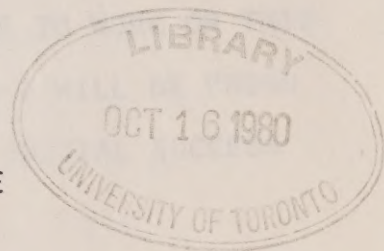






NOTES FOR AN ADDRESS BY  
THE HONOURABLE WILLIAM G. DAVIS  
PREMIER OF ONTARIO

OPENING STATEMENT  
CONSTITUTIONAL CONFERENCE



OTTAWA, ONTARIO  
SEPTEMBER 8TH, 1980

CHECK AGAINST DELIVERY




PRIME MINISTER, FELLOW PREMIERS,  
LADIES AND GENTLEMEN:

OUR PURPOSE IN BEING HERE THIS WEEK, ON  
BEHALF OF ALL CANADIANS, IS EVIDENT TO EVERYONE.

WE MUST HAMMER OUT, AND THEN PLACE  
BEFORE PARLIAMENT AND THE LEGISLATURES OF CANADA,  
A FIRM AGREEMENT ON A NEW CONSTITUTION FOR CANADA.

I AM HONOURED TO BE HERE TO WORK ON THIS  
VITAL TASK OF NATION-BUILDING AND I WILL BE PROUD  
WHEN WE HAVE ACHIEVED A DECISIVE INITIAL SUCCESS  
AT THE END OF THE WEEK.

IT IS CLEARLY TIME TO CLOSE A DECADE OF  
DEADLOCK ON THIS DIFFICULT BUT UNAVOIDABLE  
RESPONSIBILITY OF REFORMING OUR CONSTITUTION.



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WE ARE OPENING THE DOOR TO A SERIES OF PROGRESSIVE CHANGES NECESSARY TO STRENGTHEN AND IMPROVE THE RULES THAT WE REQUIRE IN ORDER TO LIVE COMFORTABLY TOGETHER. EQUALLY IMPORTANT, WE ARE HERE TO CELEBRATE OUR DIVERSITY, ASSURE OUR UNITY AND CONFIRM OUR RESPECT FOR ONE ANOTHER.

LET ME ALSO EMPHASIZE, AT THE OUTSET, THAT WHAT WE ACCOMPLISH HERE THIS WEEK WILL REPRESENT A SOLID START, BUT IT WILL NOT END THESE DISCUSSIONS. THERE ARE MANY MORE ISSUES TO CONSIDER BEYOND THIS FIRST ROUND, AND AT THE RISK OF BEING SELECTIVE, BUT BECAUSE IT IS AN OBLIGATION WE HAVE UNDERTAKEN AND WILL MEET, I AM MINDFUL OF THE CONCERNS OF OUR NATIVE PEOPLES.

FOR ALL CANADIANS WATCHING THESE PROCEEDINGS THIS WEEK, LET ME ADD ONE FURTHER INTRODUCTORY REMARK.



OUR NATIONAL AGENDA IS ALWAYS CROWDED AND EXTREMELY COMPLEX. HOWEVER, ALL SIGNIFICANT ISSUES IN PUBLIC AFFAIRS HAVE VALID CLAIMS ON OUR TIME AND ATTENTION. IN THIS REGARD, NO OTHER CONCERNS WEIGH MORE SERIOUSLY UPON US TODAY THAN THOSE OF INFLATION AND UNEMPLOYMENT.

OUR ECONOMY, OUR SOCIETY, AND OUR TRADITIONS OF DECENCY AND PROGRESS, ARE ENDANGERED BY THESE TWO MENACING FORCES. THEY WASTE OUR POTENTIAL, THEY HURT THE INNOCENT, AND THEY UNDERMINE OUR CONFIDENCE IN THE FUTURE AND OUR TRUST IN ONE ANOTHER. WE CANNOT SIMPLY WAIT THEM OUT OR EXPLAIN THEM AWAY. THEY DEMAND STRENUOUS ACTION AND CONCERTED LEADERSHIP FROM OUR GOVERNMENTS.

OUR NATIONAL ACHIEVEMENT IN SCIENCE AND  
TECHNOLOGY, HOWEVER, IS NOT  
UNIVERSALLY APPRECIATED. IN THE  
PAST, THE PUBLIC HAS BEEN  
OTHER THAN THE FACT THAT  
THESE ARE THE FACTS OF THE MATTER.

THE PROGRESS OF SCIENCE AND  
TECHNOLOGY IS THE RESULT OF  
THE WORK OF INDIVIDUALS WHO  
HAVE BEEN INSPIRED BY THE  
IDEAL OF KNOWLEDGE. THE  
IDEAL OF KNOWLEDGE IS THE  
IDEAL OF THE FUTURE. THE  
IDEAL OF THE FUTURE IS THE  
IDEAL OF THE FUTURE. THE  
IDEAL OF THE FUTURE IS THE  
IDEAL OF THE FUTURE.

THIS OBLIGATION IS NOT DIRECTLY ON OUR AGENDA THIS WEEK. BUT IT WILL BE VERY SOON. I AM PLEASED, PRIME MINISTER, THAT YOU HAVE ACKNOWLEDGED OUR CONCERNS AND THE NEED TO FIND SOLUTIONS TO OUR ECONOMIC CHALLENGES. NEVERTHELESS, I AM VERY DISAPPOINTED THAT THE MEETING OF FINANCE MINISTERS ORIGINALLY SCHEDULED TO BEGIN THIS WEEK HAS NOW BEEN POSTPONED. HOPEFULLY, A NEW DATE WILL BE FIXED PROMPTLY.

I, FOR ONE, PRIME MINISTER, AM DETERMINED TO KEEP THIS PRIORITY, "RIGHT UP THERE" WITH THE CONSTITUTION. BOTH ARE OF THE HIGHEST IMPORTANCE; WE CANNOT NEGLECT EITHER ONE.

AS TO THE IMMEDIATE BUSINESS AT HAND, I WANT TO EXPRESS MY GRATITUDE TO OUR MINISTERS FOR THE PREPARATORY WORK THAT HAS BEEN CARRIED OUT SINCE WE LAUNCHED THESE CONSTITUTIONAL DISCUSSIONS ON JUNE 9.



SERIOUS AND STRENUOUS DEBATE HAS TAKEN PLACE ON THE TWELVE ISSUES PLACED BEFORE THEM, AS A RESULT, THE CHOICES HAVE BEEN NARROWED FOR OUR CONSIDERATION. WITH PRUDENCE, AND ABOVE ALL, POLITICAL WILL, WE SHOULD NOW BE ABLE TO MAKE UP OUR MINDS.

THE ISSUES ON OUR AGENDA HAVE BEEN EXHAUSTIVELY EXAMINED BOTH THIS SUMMER AND, IN MANY CASES, FOR YEARS PAST. WE ARE EXPECTED TO TAKE THIS OPPORTUNITY NOW AND MAKE PROGRESS, AND I, FOR ONE, AM HERE TO DO JUST THAT.

ONE OF THE MORE DIFFICULT MATTERS WE MUST WEIGH IN THESE DISCUSSIONS IS THE BALANCE BETWEEN NATIONAL DIRECTION AND PROVINCIAL AUTONOMY, PARTICULARLY ON ISSUES CONCERNING THE DISTRIBUTION OF POWERS. OFTEN OUR VIEWPOINT ON SUCH QUESTIONS DEPENDS ON WHERE WE LIVE IN CANADA, OR ON OUR PERSPECTIVE OF FEDERALISM. IN THE END, HOWEVER, WE MUST CONSIDER THE MERITS OF EACH ARGUMENT, UNDERSTANDING THAT WHILE OUR VAST COUNTRY CAN TOLERATE COMPROMISE, ANY ARRANGEMENT THAT IS TO BE SUCCESSFUL MUST BE BASED ON THE TRUST THAT ALL OF US ARE CANADIANS FIRST.



I DO NOT BELIEVE THAT IT IS WISE TO COME -  
TO QUICK JUDGEMENTS ON DIFFICULT CHOICES. BUT,  
FROM MY PERSONAL EXPERIENCE, AND BY LISTENING TO  
OTHERS FROM EVERY WALK OF LIFE AND FROM EVERY  
CORNER OF ONTARIO, I HAVE COME TO SEVERAL  
CONCLUSIONS ABOUT THIS CONSTITUTIONAL EXERCISE.

ABOVE ALL, THE ONLY FAIR AND ACCEPTABLE  
DECISIONS ARE THOSE THAT SERVE CANADA AND ITS  
PEOPLE. A WISE AND LASTING CONSENSUS WILL NOT  
BE FOUND UNLESS THE WIDER NATIONAL INTEREST  
TEMPERS OUR INDIVIDUAL OBJECTIVES AND GUIDES  
OUR DELIBERATIONS.



AS WELL, PERSONAL POSITIONS AROUND THIS TABLE CLEARLY MUST CHANGE AS THE DEBATE PROGRESSES, AND AS THE MERIT OF EACH CONCERN IS FULLY REVEALED. FOR EXAMPLE, OVER TIME MY VIEWS HAVE EVOLVED, AND I HAVE BECOME CONVINCED THAT:

IN THE INTEREST OF CONSTRAINING THE IMPULSES OF LARGE AND OFTEN IMPERFECT GOVERNMENT, IT IS TIME THAT WE PUT IN OUR WRITTEN CONSTITUTION A CLEAR STATEMENT OF OUR INDISPUTABLE DEMOCRATIC RIGHTS AND FREEDOMS IN ORDER TO PROTECT OUR PEOPLE.

IN THE INTEREST OF OUR FUTURE TOGETHER, IT IS TIME TO ENSURE THAT, ANYWHERE IN CANADA PARENTS OF THE OFFICIAL LANGUAGE MINORITY CAN HAVE THEIR CHILDREN EDUCATED IN THE ENGLISH OR FRENCH LANGUAGE, AS THE CASE MAY BE.

IN THE INTEREST OF USING WISELY WHAT NATURE HAS SO RICHLY BESTOWED ON US, IT IS TIME THAT WE STOOD UP FOR, AND SHARED FAIRLY, THE BENEFITS OF OUR ECONOMIC UNION.



SURELY IT IS TIME, AND SURELY WE ARE MATURE ENOUGH, TO PUT THE MISUNDERSTANDINGS OF OUR PAST BEHIND US AND CONCENTRATE SECURELY ON THE BRIGHT HOPES OF OUR FUTURE.

NO DOCUMENT CAN ADEQUATELY DEFINE WHAT OUR COUNTRY IS, AND, BY ITSELF, A NEW AND BETTER CONSTITUTION WILL NOT BUILD A NEW AND BETTER CANADA. HOWEVER, OUR CONSTITUTION MUST CONFIRM AND SECURE WHAT IS BEST AND MOST DYNAMIC IN THE SPIRIT OF OUR COUNTRY.

ENTRENCHING OUR RIGHTS, PROTECTING OUR MINORITIES, AND STRENGTHENING OUR ECONOMIC UNION WILL DISCIPLINE US TO SOME EXTENT, BUT MORE IMPORTANT, THESE ACTIONS WILL DEMONSTRATE OUR CIVILITY AS A PEOPLE AND OUR SOLIDARITY AS A NATION.

BY CHOOSING TO BIND OURSELVES TO BASIC PRINCIPLES, WE WILL NOT ONLY ENHANCE OUR MATERIAL PROSPECTS, BUT WILL PUT BEHIND US LINGERING DOUBTS ABOUT OUR REGARD FOR ONE ANOTHER. THIS IS A COMMITMENT YOU AND I MUST ACCEPT BECAUSE WE MUST COME TOGETHER AS A PEOPLE AND AS A COUNTRY.



FOR EXAMPLE, I BELIEVE, THAT TO PROVIDE A CONSTITUTIONAL GUARANTEE FOR MINORITY LANGUAGE EDUCATION, WHERE NUMBERS WARRANT, WILL NOT THREATEN OUR SECURE AND VIBRANT MAJORITIES IN ENGLISH AND FRENCH-SPEAKING CANADA. AS SIR JOHN A. MACDONALD EXPLAINED THE ACCOMMODATIONS OF HIS TIME, TO HIS MAJORITY, IN MY PROVINCE, OVER A CENTURY AGO:

"WE DO NOT WANT TO STAND ON THE EXTREME LIMITS OF OUR RIGHTS. WE ARE READY TO GIVE AND TO TAKE. WE CAN AFFORD TO BE JUST; WE CAN AFFORD TO BE GENEROUS, BECAUSE WE ARE STRONG."

AS WE STRENGTHEN OUR RESPECT FOR EACH OTHER, SO TOO WE MUST STRENGTHEN OUR NATION-WIDE ECONOMY. CONSEQUENTLY, I BELIEVE WE SHOULD PROTECT IN THE CONSTITUTION THE FREE MOVEMENT OF PEOPLE, GOODS, SERVICES AND CAPITAL THROUGHOUT THE LAND. THIS MUST BE BINDING ON ALL OUR GOVERNMENTS.

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I DO NOT ACCEPT THE REJOINDER THAT ONTARIO IS INSENSITIVE TO THE COMPETING NEEDS OF REGIONAL DEVELOPMENT AND LOCAL CIRCUMSTANCES. AS ONE OF THE FOUNDING PROVINCES OF CANADA WE UNDERSTAND, AS WELL AS ANY, THE DIVERSITY OF INTERESTS IN THIS COUNTRY. NEVERTHELESS, ONE OF THE CENTRAL REASONS THE ARCHITECTS OF OUR FEDERATION FORMED OUR COUNTRY IN THE FIRST PLACE WAS TO CREATE A STRONG TRANSCONTINENTAL ECONOMY.

TO REASSERT THAT HERITAGE IS NOT A SUBTLE ONTARIO STRATEGY TO DOMINATE MARKETS AND NATURAL RESOURCES; IT IS TO REASSERT A POLITICAL AND HUMAN IDEAL THAT WAS SOUND IN ITS VISION, WHEN FIRST CONCEIVED OVER A HUNDRED YEARS AGO. IT IS EVEN MORE IMPORTANT TODAY.



AN ECONOMIC UNION IS EVIDENCE OF TRUST IN ONE ANOTHER. THE EUROPEAN ECONOMIC COMMUNITY HAS STRUGGLED FOR MORE THAN TWO DECADES TOWARDS THAT SIMPLE CONCEPT, AND HAS ENACTED SOME TOUGH LAWS TO ENSURE THAT MEMBERS BRING A MEASURE OF HARMONY TO THEIR MUTUAL ECONOMIC ACTIVITIES. AS A RESULT, IN EUROPE, WE SEE A COMMUNITY WHICH, ALTHOUGH A CENTURY BEHIND US IN NATIONAL POLITICAL DEVELOPMENT, IS NOW TEACHING US SOME OF THE BASIC PRINCIPLES OF CO-OPERATIVE ECONOMIC BEHAVIOUR.

IF WE CANNOT ACCEPT THE UNDERSTANDING THAT TO BE A CANADIAN PROVIDES THE RIGHT TO CONDUCT BUSINESS IN CANADA WITHOUT DISCRIMINATION, THEN WE HAVE TWO CLASSES OF CITIZENS. SUCH A RESULT IS CLEARLY NOT ACCEPTABLE. THUS THE ONUS OF PROOF MUST BE ON THE POLITICAL SYSTEM EVERY TIME IT REMOVES, ALTERS OR IMPINGES ON THE BASIC RIGHT OF ALL CANADIANS TO MOVE FREELY AND TO EARN A LIVING ANYWHERE IN CANADA.



THERE ARE, I ACKNOWLEDGE, SPECIAL CIRCUMSTANCES WHICH WILL REQUIRE EXEMPTIONS, FROM TIME TO TIME, FROM THE STRICT DEMANDS OF AN ECONOMIC UNION. BUT WE SHOULD NOT PERMIT ACTIONS WHICH IMPAIR THE OVERALL INTEGRITY OF THE COUNTRY.

ONTARIO IS PREPARED TO FOLLOW THE PRINCIPLES OF A BETTER CANADIAN ECONOMIC UNION, AND TO MAKE WHATEVER ADJUSTMENTS MIGHT BE NECESSARY TO ACHIEVE THAT END. IT WILL REQUIRE SOME SACRIFICE BY OUR GOVERNMENTS, BUT IT WILL ASSURE A RICH LEGACY FOR OUR CHILDREN.

PRIME MINISTER, LIKE MY COLLEAGUES, I HAVE COME HERE TO NEGOTIATE IN GOOD FAITH ON ALL TWELVE ITEMS ON THIS AGENDA FOR CONSTITUTIONAL REFORM. I DO NOT SEEK TO ENHANCE THE POWERS OF ONE GOVERNMENT OVER ANOTHER. RATHER, I WANT TO HELP ENSURE THAT OUR NEW CONSTITUTION WILL RESULT NOT IN A MORE DIVIDED COUNTRY, BUT IN A STRONGER CANADA.



THE NATIONAL INTEREST IS OBVIOUSLY MORE THAN THE INTERESTS OF OTTAWA, OR ONTARIO, FOR THAT MATTER, AND I AM CONFIDENT THAT I HAVE BEEN ABLE TO MAKE THAT DISTINCTION DURING MY PUBLIC CAREER. HOWEVER, I ALSO BELIEVE THAT THE LEGITIMATE DESIRES OF PROVINCES, WHICH WISH TO BROADEN THEIR CAPACITY TO SERVE THE PEOPLE THEY REPRESENT, MUST BE BALANCED BY AN UNDERSTANDING THAT CANADIANS AS A WHOLE, WANT, AND NEED, TO HAVE A STRONG NATIONAL PARLIAMENT AND A STRONG NATIONAL GOVERNMENT.

NOW, BEFORE I CLOSE, I WOULD LIKE TO SAY SOMETHING ABOUT MY MOTIVES.

IT IS IN THE TRADITION OF MY PROVINCE TO UNDERTAKE DIFFICULT VENTURES FOR THE SAKE OF OUR COUNTRY.



HOWEVER, I COME FROM A COMMUNITY WHICH IS NOT QUICK TO CHANGE, AND LIKES TO MAKE UP ITS OWN MIND IN ITS OWN TIME. MY ROOTS ARE DEEP IN THAT KIND OF ONTARIO, WHICH IS MORE REPRESENTATIVE OF OUR PEOPLE THAN MANY HERE MAY THINK. WE ARE INDEPENDENT; PRAGMATIC AND LOYAL. WE ARE COMFORTABLE IN OUR TRADITIONS. BUT WE HAVE ALWAYS ACTED ON TIME FOR CANADA.

THAT IS WHY EIGHTEEN MONTHS AGO, AT THIS PLACE, I PROPOSED THAT WE BRING THE CONSTITUTION HOME, BECAUSE ONTARIO HAD DECIDED THAT IT WAS TIME TO ACT.

OUR PROVINCE IS NOT PREPARED TO IMPAIR THE UNITY AND INTEGRITY OF THIS COUNTRY THROUGH RASH ACTS OR INDECISION. HOWEVER, OUR PEOPLE EXPECT US TO ACT FIRMLY AND WISELY; AND THEY DEMAND THAT WE RECOGNIZE THE DIFFERENCE BETWEEN MODERATE ACTION AND SELFISH PROCRASTINATION.

WHAT I AM TRYING TO SAY, ON THEIR BEHALF, IS THAT IT IS TIME TO TAKE THE FIRST SENSIBLE STEPS, TOGETHER AROUND THIS TABLE, TO RENEW OUR UNITY AND REVIVE OUR NATIONHOOD.



WE LIVE, UNFORTUNATELY, IN A WORLD IN WHICH FEAR AND EXTREMISM ARE FAR TOO COMMON. GOOD MEN AND WOMEN ARE INCREASINGLY INTIMIDATED BY DIVISIVENESS AND DEFEATISM. YET, DESPITE THESE CIRCUMSTANCES, CANADA DOES TRULY STAND OUT AS A HOME OF TEMPERATE PEOPLE AND GREAT HOPES.

I AM CONFIDENT, THEREFORE, THAT TOGETHER WE CAN EMPLOY IN OUR TASK THOSE PRECIOUS QUALITIES OF MODERATION AND COMMON SENSE, WHICH ARE DEEP IN OUR CHARACTER, AND WHICH WILL ENABLE US TO CONFIRM, IN OUR EFFORTS THIS WEEK, THE WORTH OF THIS GREAT NATION.



Government  
Publications

OPENING STATEMENT

CHARTER OF RIGHTS

HONOURABLE ALLAN BLAKENEY

PREMIER OF SASKATCHEWAN

FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION

OTTAWA, SEPTEMBER 8-12, 1980.



OPENING STATEMENT  
CHARTER OF RIGHTS - p. 1

Saskatchewan is not in favour of entrenching in the Canadian constitution the rights which have been enumerated in the Charter of Rights proposed by the federal government.

We believe that Canadians ought not to have taken from them their fundamental right to participate in all political choices. In particular, this right ought not to be eroded under the guise of advancing people's freedoms. If we were to decide to place the Charter of Rights in the constitution we would be taking out of the hands of the elected representatives, and giving to courts, the power to decide some of this country's most significant political issues.

The fundamental issue is: What things in our society ought to be decided by governments and what things ought to be decided by the courts?

We have been schooled in the idea that when people, individually or in groups, desire change, one appropriate way is to petition, to lobby, to badger their elected representatives.

The proposal before us, if adopted, would deprive people of that deeply ingrained democratic avenue on issues about which people feel strongly.

For example, the police chiefs of Canada have been conducting a campaign to persuade parliament to restore capital punishment. I don't happen to support that campaign. But I certainly support their right to try to influence change. But what would be their position should a future Supreme Court decide that capital punishment was a "cruel and unusual punishment" prohibited by the Charter of Rights? I suggest they will not get very far sending a delegation to the Chief Justice. And no Parliament could reverse the Court's decision.

There is deep division among Canadian people on the issue of abortion. Those for and those against are very active in the political arena, as every legislator knows. How will they go about influencing decisions in the courts?

Or take obscenity. Should the type of literature and movies to be read or seen in Canada be determined by judicial precedent or decided by governments? It's certainly not a matter which governments find easy to handle. But are we to say -- if you have a complaint, don't talk to your M.P. -- call your Supreme Court



OPENING STATEMENT  
CHARTER OF RIGHTS - p. 2

judge? He's the one who decides because his court has been given the sole right to decide questions of freedom of speech and expression.

I happen to believe in the integration of schools. But is the best way to achieve that to have the court establish quotas and timetables for the school board, as the U.S. Supreme Court did in South Boston?

I also believe in freedom of religion. But suppose a community is concerned with the problem of young people caught up in religious cults. Should this be debated in legislatures and Parliaments or should the sole decision rest with the courts, being a matter of freedom of religion. It is not clear that the public would or should not accept that the legislatures have no role to play.

I cannot accept the view that we serve the people well by going down this road. They will be frustrated because they cannot get at the seat of decision making. They will perceive that the real power vests, not in their elected members, but in those who appoint the judges.

For 113 years Canada has managed rather well without having its legislative policies subjected to final and conclusive review by the courts. The fundamental principles in our constitutional system have been legislative supremacy and political accountability. Where is the evidence that they have failed to serve us? Where is the evidence that court supervision will make people more free? Some other countries, of course, have entrenched bills of rights. But that, in itself, does not persuade me that Canada's constitutional system is defective and should be fundamentally altered.

There are two reasons.

First, when I look at the record of legislators in recognizing basic human rights in recent decades I am far from being worried about their capacity and willingness to reach responsible decisions. Some people, ten years ago, did raise serious questions about the federal government's commitment to civil liberties. I don't intend to re-open that episode. I merely want to point out that the very high public interest in governmental decisions of that time shows how concerned the Canadian public is with these issues. Under our democratic system

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OPENING STATEMENT  
CHARTER OF RIGHTS - p. 3

this public concern and public commitment to rights is the best protection available against tyranny by government.

On the positive side provincial legislatures and Parliament enjoy an impressive record in basic rights, especially the rights to non-discriminatory treatment and due process. I refer to the enactment at both the federal and provincial levels of human rights codes and the enactment in some provinces of procedural codes for the exercise of statutory power, and the creation of provincial ombudsmen.

Second, the record of the Supreme Court of the United States or the recent record of the Supreme Court of Canada fails to convince me that this is the body in which ultimate authority over significant public issues not essentially legal in nature should be vested. I say this not to be critical of the Court but to recognize the obvious fact that judges have no special training or expertise in many of the social and economic issues involved. Nor do they have any way to command the research staffs or to precipitate the public debate that the resolution of many of these issues requires. Added to this they are already heavily burdened with work and are likely to be further burdened by issues arising out of constitutional change, even without including an entrenched Charter of Rights in the package of changes.

Therefore, I see little reason to expect that creating judicial power through the Charter of Rights will produce better decisions.

To sum up, our basic position on entrenched rights remains unchanged. We hope that those governments which do not share our views will be able to accept that our position is based on a commitment to human rights which is equal to that of any government in Canada.

We simply do not support the idea of entrenching a broad Charter of Rights. As a matter of principle, we believe that citizens must retain the opportunity to control, through elected representatives, the decisions of governments. And we are not persuaded of the merits of entrenchment when we compare the protection of liberties in countries with and without entrenched Bills of Rights. Nor are we convinced that the rights of citizens would have been better protected, here in Canada, had we relied on the courts to do the job.



OPENING STATEMENT  
CHARTER OF RIGHTS - p.4

The protection of rights in Canada has relied upon British parliamentary institutions and common law traditions. That system has worked well in Canada for 113 years, and in Britain for centuries. It is a system which we have inherited and hope to enrich.

In the final analysis, fundamental rights are not protected by pieces of paper. Fundamental rights are protected by the will of the people in a free society. I am impressed by the words of Judge Learned Hand: "This much I think I do know -- that a society so riven that the spirit of moderation is gone, no court can save; that a society where that spirit flourishes, no court need save."



QUEBEC PROPOSAL

PREAMBLE AND STATEMENT OF PURPOSE OF THE CONSTITUTION

In accordance with the will of Canadians, it is the will of the provinces of Canada, in consort with the federal government, to remain freely united in a federation, as a sovereign and independent country, under the Crown of Canada, with a constitution similar in principle to that which has been in effect in Canada;

THE FUNDAMENTAL PURPOSE of the Federation is to preserve and promote freedom, justice and well-being for all Canadians, by:

PROTECTING individual and collective rights, including those of the native people; \*

ENSURING that laws and political institutions are founded on the will and consent of the people;

FOSTERING economic opportunity, and the security and fulfillment of Canada's diverse cultures;

RECOGNIZING the distinctive character of the people of Quebec which, with its French-speaking majority, constitutes one of the foundations of the Canadian duality;

CONTRIBUTING to the freedom and well-being of all mankind.

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This phrase is subject to acceptance by the native leadership.



Publications



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FEDERAL-PROVINCIAL CONFERENCE  
OF  
FIRST MINISTERS ON THE CONSTITUTION

Proposal for a common stand  
of the Provinces  
QUÉBEC



Ottawa  
September 8-12, 1980



The attached text has been prepared by Québec for the purpose of specifying the common stand of the provinces on the series of subjects discussed by the Conference.

It was distributed to the provincial delegations and discussed by the ministers on Thursday, September 11, and served as a basis for the discussion by the First Ministers of the Provinces on Friday morning, September 12.

The appendices have been added to assist in understanding the text.

Québec Delegation

Ottawa, September 13, 1980.



DISCUSSION DRAFT

[The Provinces of Canada unanimously] agree in principle to the following changes to be made to the Constitution of Canada. It is understood that these changes are to be considered as a global package and that this agreement is a common effort to come to a significant first step towards a thorough renewal of the Canadian federation.

1. Natural resources

1979 Best effort draft (APPENDIX A)

2. Communications

Provincial consensus draft, August 26, 1980 (APPENDIX B)

3. Upper Chamber

Best effort draft for a Council of the Provinces, as an interim solution. (weight of vote and implementation to be set after consensus reached on horizontal federal powers) (APPENDIX C)

4. Supreme court of Canada

Entrenchment

6-5 at least on constitutional matters

Alternate chief-justice

Appointment procedure, consultation & consent, (no dead-lock mechanism) (APPENDIX D)

4a. Judicature

Repeal of S.96

Constitutional guarantees (APPENDIX E)



5. Family law

Sub-committee draft (APPENDIX F)

6. Fisheries

Provincial draft, July 21, 1980 (APPENDIX G)

7. Off-shore resources

Principle of equal treatment for on-shore and off-shore resources

8. Equalization

Manitoba - Saskatchewan draft less paragraph 3. (APPENDIX H)

9. Charter of rights

Fundamental freedoms

Democratic rights

Judicial rights

Discrimination rights

- all existing laws deemed valid

- non-obstante clause

Official languages of Canada

Use of official languages in federal institutions & services

S.133 applicable to Ont., Qué., N.B., Man.

Multilateral reciprocity agreement to be concluded without delay (Bill 101: Canada clause).

10. Patriation

Alberta Amending Formula (APPENDIX I) for matter subject to opting-out, with provision for financial arrangements between governments.

Victoria formula for other matters (APPENDIX J)



Implementation of patriation delayed until unanimous approval (APPENDIX 1)

11. Powers over the economy

No new S.121 (or Saskatchewan draft) (APPENDIX K)

Part of new S.91(2)

12. Preamble

Quebec proposal (APPENDIX L)

If a satisfactory interprovincial consensus is reached in this way, it must be accompanied when tabled by an announcement of the following measures:

- (1) As soon as the federal government has given its assent to this consensus, the matters will be returned to the ministers' committee for final drafting of the texts in their legal form.
- (2) Another list of subjects must be established to be covered by constitutional discussions at the ministerial level in the following months:
  - the horizontal powers of the federal government; (spending power, declaratory power, power to act for "peace, order and good government", etc.);
  - culture;
  - social affairs;
  - urban and regional affairs;
  - regional development;
  - transportation policy;
  - international affairs;
  - the administration of justice.



- (3) Another conference of First Ministers must be called for December to approve the texts drafted on the twelve subjects (initial list) and to discuss the results of the work done on the new subjects (second list).
- (4) If the results of this work are satisfactory, then the Canadian Parliament could adopt its address to the Queen at the beginning of 1981.
- (5) Another Conference of First Ministers to be held in February 1981 to approve the texts drafted on the second list.
- (6) From February 1981: adoption of the resolutions of the ten Legislatures and Parliament to bring patriation into effect and to implement the second list according to the amending formula.
- (7) Final Act of the British Parliament to be adopted hopefully in June 1981 implementing the amendments of the first list.



SUSPENSIVE PATRIATION

A patriation formula with delayed or suspensive effect could enable the federal government to go to London only once and yet at the same time respect the principle of provincial consent.

This formula would enable the British Parliament to enact a final amendment to the B.N.A. Act with the following effects:

- a) the law would decree that the Parliament of Westminster no longer legislates with respect to the B.N.A. Act which is henceforth to be amended in accordance with the amendment formula enacted. This provision would come into force only by proclamation of the Government of Canada issued once it has been ascertained that each of the Provinces of Canada, as well as the Federal Government, has approved it;
- b) the same law would give immediate effect to the amendments agreed upon with respect to

.../2



the matters discussed during the current constitutional negotiations. These amendments would come into force immediately and, obviously, would not be subject to the suspensive effect of the provision respecting patriation.

DRAFT

1. The B.N.A. Acts 1867 to 1975 shall be amended as follows: (Insert the amendments to take immediate effect.)
2. Section 7 of the Statute of Westminster is repealed.
3. The B.N.A. Acts 1867 to 1975 shall henceforth be amended as follows: (Insert the agreed-upon amendment formula.)
4. This Act shall come into force the day of its sanction. Nevertheless, Sections 2 and 3 shall take effect by proclamation issued by the Governor General of Canada; such proclamation shall not be issued unless it is declared that it is issued in accordance with the resolutions adopted by each of the ten Legislatures and by the Parliament of Canada.



Draft Proposal Discussed by First MinistersRESOURCE OWNERSHIP AND INTERPROVINCIAL TRADE

(1) (present Section 92)

(1) Carries forward existing Section 92

Resources

(2) In each province, the legislature may exclusively make laws in relation to

- a) exploration for non-renewable natural resources in the province;
- b) development, exploitation, extraction, conservation and management of non-renewable natural resources in the province, including laws in relation to the rate of primary production therefrom; and
- c) development, exploitation, conservation and management of forestry resources in the province and of sites and facilities in the province for the generation of electrical energy, including laws in relation to the rate of primary production therefrom.

(2) The draft outlines exclusive provincial legislative jurisdiction over certain natural resources and electric energy within the province. These resources have been defined as non-renewable (e.g. crude oil, copper, iron and nickel), forests and electric energy. This section pertains to legislative jurisdiction and in no way impairs established proprietary rights of province over resources whether these resources are renewable or non-renewable.

Export from the province of resource

(3) In each province, the legislature may make laws in relation to the export from the province of the primary production from non-renewable natural resources and forestry

(3) Provincial governments are given concurrent legislative authority to pass laws governing the export of the resources referred to above from the province. This legislative capacity is in



resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for prices for production sold for export to another part of Canada that are different from prices authorized or provided for production not sold for export from the province.

the sphere of both inter-provincial and international trade and commerce. Provincial governments are prohibited from price discrimination between resources consumed in the province and those destined for consumption in other provinces. This new provincial legislative capacity applies to these resources in their raw state and to them in their processed state but does not apply to materials manufactured from them.

#### Relationship to certain laws of Parliament

(4) Any law enacted by the legislature of a province pursuant to the authority conferred by subsection (3) prevails over a law enacted by Parliament in relation to the regulation of trade and commerce except to the extent that the law so enacted by Parliament,

- a) in the case of a law in relation to the regulation of trade and commerce within Canada, is necessary to serve a compelling national interest that is not merely an aggregate of local interests; or
- b) is a law in relation to the regulation of international trade and commerce.

(4) The effect of this new provincial legislative responsibility over trade and commerce diminishes the scope but does not eliminate the federal government's exclusive authority over trade and commerce. The exercise of the provincial power is subject to two limitations. First, the federal government may legislate for interprovincial trade if there is "compelling national interest". This trigger mechanism may apply to circumstances other than an emergency as established under the peace, order and good government power. Second, federal laws governing international trade prevail over provincial laws in international trade, in effect establishing a concurrent power similar to that for agriculture.

#### Taxation of resources

(5) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

- a) non-renewable natural resources and forestry resources in the province and the primary production therefrom; and

(5) Provincial powers of taxation are increased to include indirect taxes over the resources outlined in this section - whether these resources are destined in part for export outside the province. These taxes are to apply with equal force both in the province and across the rest of the country.



- b) sites and facilities in the province for the generation of electrical energy and the primary production therefrom,

whether or not such production is exported in whole or in part from the province but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

#### Production from resources

- |   |   |
|---|---|
| <p>(6) For purposes of this section,</p> <ul style="list-style-type: none"><li>a) production from a non-renewable resource is primary production therefrom if<ul style="list-style-type: none"><li>i) it is in the form in which it exists upon its recovery or severance from its natural state, or</li><li>ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil or refining a synthetic equivalent of crude oil; and</li></ul></li><li>b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood.</li></ul> | <p>(6) In determining the scope of provincial legislative powers over resources exported from the province, it became necessary to define the degree to which the resource was processed. It is not intended to extend provincial authority to manufacturing but it is intended to extend it to something beyond its extraction from its natural state. Given the varying resources covered by this section, the wording of this subsection is thought to place the appropriate limitations on provincial powers.</p> |
|---|---|

#### Existing Powers

- |  |   |
|--|---|
| <p>(7) Nothing in subsections (2) to (6) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of those subsections.</p> | <p>(7) This clause ensures that any existing provincial legislative powers found in s.92 are not impaired by the new section.</p> |
|--|---|



Draft Proposal Discussed by First Ministers

LIST OF ALTERNATIVES COVERING THE  
DISPOSITIONS OF SECTION 109

Option 1

Maintain the status quo, do not carry forward Section 109.

Option 2 (a)

Property in  
lands,  
mines, etc.

\*"123.1 All lands, mines, minerals and royalties belonging to any province immediately before this section comes into effect, and all sums then due or payable in respect of any such lands, mines, minerals and royalties, belong immediately after this section comes into effect to the province or are then due and payable, subject to any trusts existing in respect thereof and to any interest other than that of the province therein."

Option 2 (b)

Ownership  
of property

\*"123.1 All property belonging to any province immediately before this section comes into effect, belongs immediately after this section comes into effect to the province, subject to any trusts existing in respect thereof and to any interest other than that of the province therein."

Option 3

Ownership  
of property

"127.1 Nothing in this Act changes the ownership in any property owned by Canada or a province immediately before the coming into force of this Act."

\*Note: Numbering is tied in to numbering found in Bill C-60.



## COMMUNICATIONS

BEST EFFORTS DRAFT (PROVINCES)COMMUNICATIONS

- (1) In each province the Legislature may make laws in relation to telecommunication works and undertakings in the province notwithstanding that such works and undertakings connect the province with any other or others of the provinces, extend beyond the limits of the province, or emit signals originating in the province beyond the province, or receive or distribute in the province signals originating outside the province.
- (2) The Parliament of Canada may make laws in relation to telecommunication works and undertakings mentioned in sub-section (1) other than works and undertakings wholly situate within a province.
- (3) No law enacted by the Legislature of a province or the Parliament of Canada under this section shall in its pith and substance be directed to the disruption of the free flow of information.
- (4) Any law enacted by the Legislature of a province under sub-section (1) prevails over a law enacted by Parliament under sub-section (2) except a law of Parliament in relation to:
  - (a) matters of a technical nature respecting management of the radio frequency spectrum;
  - (b) the space segment of communication satellites;
  - (c) regulation of Canadian broadcasting transmitting network undertakings that extend to four or more provinces, including the re-distribution of their signals by other telecommunications undertakings;
  - (d) foreign broadcast signals, including the re-distribution of these signals by other telecommunications undertakings;
  - (e) the use of telecommunication works and undertakings for aeronautics, radio-navigation, defence, or in national emergencies.
- (5) In the event that the laws of two or more provinces conflict so as to disrupt the free flow of information, one of the provinces may petition the Parliament of Canada to enact a law to resolve the specific conflict and such law shall prevail.



BEST EFFORTS DRAFT  
Council of the Provinces

- |                                    |    |  |
|------------------------------------|----|--|
| Council<br>established             | 1. | There shall be a body to be called the Council of the Provinces.   |
| Membership                         | 2. | The Council shall have thirty (30) members.  |
| Appointment                        | 3. | The Lieutenant Governor in Council of each province shall appoint three members to the Council.  |
| Head of<br>delegation.             | 4. | The Lieutenant Governor in Council of each province shall designate one member to be the head of that province's delegation.   |
| Tenure of<br>members               | 5. | Each member holds office at the pleasure of the Lieutenant-Governor in Council of his respective province.   |
| Qualifica-<br>tions                | 6. | (a) A member of a provincial legislative assembly may also be a member of the Council.<br><br>(b) Subject to (a) the legislative assembly of a province may prescribe the qualifications for its members to the Council. |
| Federal<br>government<br>spokesmen | 7. | The federal Cabinet may designate any person or persons, including federal Cabinet ministers, who shall be entitled to appear in and speak to any matter coming before the Council.                                      |
| Votes                              | 8. | (a) Each province shall have one vote on every matter before the Council.  |



- (b) The vote of each province shall be cast by the head of that province's delegation or his designate.

Ratification      9. (a) Unless otherwise specified herein, the ratification of any matter coming before the Council requires a two-thirds majority of the votes cast.

- (b) Unless otherwise specified herein the failure of legislation or an appointment to receive the required majority means that the legislation or appointment shall not take effect.

- (c) Legislation on which the Council has made no decision within ninety days from the time of referral shall be deemed to be ratified unless an extension of the time is made by the federal government. Appointments on which the Council has made no decision within thirty days from the time of referral shall be deemed to be ratified.

Powers            10. Matters coming within the following classes shall be referred to the Council for its consideration, debate and disposition according to section 9, namely

- (a) The exercise by the Parliament of Canada of the declaratory power pursuant to section 92 (10) (c).



Powers 10. (b)

(i) Laws of the Parliament of Canada initiating general conditional grants to the provinces in relation to matters within exclusive<sup>1</sup> provincial jurisdiction<sup>2</sup>

(ii) 3

(c)

(i) Laws of the Parliament of Canada made pursuant to the opening words of Section 91 or actions of the Government of Canada pursuant thereto, which have the effect of suspending in whole in part the normal distribution of legislative powers between the Parliament of Canada and the legislatures of one or more of the provinces, except in cases where there is <sup>\*</sup>a state of real or apprehended war, invasion or insurrection.

(ii) Any measure taken to deal with real or apprehended insurrection will become inoperative fifteen days after having been proclaimed unless it is ratified by the Council.

- 
1. Ministers were unable to conclude whether this provision should be limited to areas of exclusive provincial jurisdiction or made broader.
  2. Ministers recognize the necessity, at some stage, of further ministerial or First Ministerial determination of what if any fiscal equivalent should be available to non-participating provincial governments.
  3. At the request of Quebec the following clause was also considered, but Ministers did not reach a conclusion:

"Laws of the Parliament of Canada initiating payments to classes of individuals or institutions in relation to matters within exclusive provincial jurisdiction."



- (d) Laws of the Parliament of Canada, or sections thereof, which are to be administered by provincial governments.
- (e) Approval of appointments to the managing bodies of such federal boards, commissions or agencies, as are determined from time to time by the Conference of First Ministers, to have significant interest to all or some of the provinces.<sup>4</sup>
- (f) Other matters which have emerged or might emerge in the overall process of constitutional review which Ministers or First Ministers deem appropriate

Dualism      11. In the case of any matter coming before the Council which is in relation to the French language or French culture the ratification of the Council would require that the two-thirds majority prescribed by section 9 (a) include the affirmative vote of Quebec.<sup>5</sup>

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- 4. There was some discussion as to whether, as an alternative, a list of specific subject areas such as energy, communications, tariffs, monetary policy and transportation should be specified.
- 5. Ministers also examined the alternative of a weighted vote on this aspect but did not reach a conclusion. Ministers also recognized the fundamental definitional problem attached to the word "culture".



## Procedure

12.

(a) The Council shall have power to determine its own procedure.

(b) A simple majority only shall be necessary for the establishing of any rules of procedure.



BEST EFFORTS DRAFT

August 12, 1980

*The Supreme Court of Canada*

Supreme Court  
of Canada

1. There shall be a general court of appeal for Canada called the Supreme Court of Canada.

Constitution  
of Court

2. The Supreme Court of Canada shall consist of eleven judges, who shall be appointed by the Governor General.

Eligibility  
for  
appointment

3. (1) A person is eligible to be appointed as a judge of the Supreme Court if, after having been admitted to the bar of any province, the person has, for a total period of at least ten years, been a judge of any court in Canada or a member of the bar of any province.

Appointment of  
judges from  
Quebec

(2) Five of the judges of the Supreme Court shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total period of at least ten years, been judges of any court of that province or of a court established by Parliament or members of the bar of Quebec.

Designation of  
Chief Justice  
of Canada

4. (1) A chief justice, to be called the Chief Justice of Canada, shall be designated by the Governor General.

Alternate  
designation

(2) The Chief Justice of Canada shall be designated for single term, alternatively, from among the judges appointed subsection 3(2) and from among the other judges of the Supreme Court.

Term of office

(3) The term of office of a judge as Chief Justice of Canada expires seven years after the designation has effect or upon the judge attaining the age of retirement, whichever first occurs.

Procedure on  
vacancy in  
Court

5. (1) Where a vacancy in the Supreme Court occurs, the Minister of Justice of Canada shall consult with the Attorneys General of all of the provinces and shall seek the consent of the Attorney General of the province of the person being considered for appointment as to the appointment of that person.

Procedure  
where no  
consent

(2) Where consent is not forthcoming, the Minister of Justice of Canada and the appropriate provincial Attorney General shall, together with [a person chosen by them or if they do not agree a person chosen by] the Chief Justice of Canada, determine the person to be recommended for appointment.

Tenure of  
office of  
judges of  
court

6. (1) The judges of the Supreme Court hold office during good behaviour until they attain the age of seventy years but are removable by the Governor General on address of the Senate and the House of Commons.

Salaries,  
allowances and  
pensions of  
judges

(2) Parliament shall provide for the salaries, allowances and pensions of the judges of the Supreme Court.



ultimate appellate  
jurisdiction of  
Court  
appeals with  
leave of  
Court

7. The Supreme Court has exclusive ultimate appellate civil and criminal jurisdiction.

8. An appeal to the Supreme Court lies with leave of the Supreme Court from any judgment of the highest court in a province, or a judge thereof, in which judgment can be had in the particular case sought to be appealed to the Supreme Court, where any question involved raises a constitutional issue.

appeals from  
Governor General  
in Council  
references

9. An appeal to the Supreme Court lies from an opinion pronounced by the highest court established by Parliament on any constitutional question referred to it by the Governor General in Council

Direct references  
by Governor  
General in  
Council  
appeals from  
provincial  
references

10. Parliament may make laws authorizing the Governor General in Council to refer questions of law or fact direct to the Supreme Court.

11. An appeal to the Supreme Court lies from an opinion pronounced by the highest court in a province on any constitutional question referred to it by the Lieutenant Governor in Council of the province.

Direct  
provincial  
references

12. The legislature of a province may make laws authorizing the Lieutenant Governor in Council to refer questions of law or fact directly to the Supreme Court.

Additional  
appeals

13. In addition to any appeal provided for by this Act, an appeal to the Supreme Court lies as may be provided by Parliament.

Organization,  
maintenance  
and operation  
of Court

14. Parliament may make laws providing for the organization, maintenance and operation of the Supreme Court, and the effective execution and working of this division and the attainment of its intention and objects.

Consultation

15. The Minister of Justice of Canada shall consult with the Attorneys General of the provinces in respect of proposals for laws referred to in sections 13 and 14.

#### TRANSITIONAL

Continuation of  
Supreme Court  
of Canada

XX. (1) The court existing immediately before the commencement of this Act under the name of the Supreme Court of Canada is continued as provided in this Act.

Continuation  
in office of  
judges

(2) The Chief Justice of Canada and other judges of the Supreme Court of Canada shall continue in office as though appointed and designated in the manner provided in this Act except that they shall hold office as judges Chief Justice until attaining the age of seventy-five years.

Continuation  
of laws

(3) Until otherwise provided pursuant to this Act, all laws respecting the Supreme Court of Canada and the judges thereof that were in force immediately before the commencement of this Act shall continue, subject to this Act.



Appointment of Superior, District and County Court  
Judges (section 96)

At the Ottawa CCMC meeting nine provinces supported the following proposition:

- 1) that a province may appoint the judges of its Superior, District, and County Courts and where it exercises that power, the provisions of s.96 of the B.N.A. Act would not be applicable to the province; and
- 2) that the constitution:
  - a) guarantee the existence of a superior court of general jurisdiction in each province;
  - b) guarantee the independence of the members of such courts;
  - c) enable a province to establish bodies to administer the application of its laws;
  - d) enshrine the power of judicial review in the superior court of general jurisdiction; and
  - e) provide that there shall not be a dual system of courts.

The representative of Manitoba while in favour of the principles in para (2) favoured the retention of the federal appointing power.

The federal Minister of Justice stated that, while he recognized the difficulties caused by the judicial interpretation of s.96 for provinces attempting to create administrative bodies, he did not believe that it was necessary to change the whole judicial system in Canada in order to solve that problem. In his view, the matter required further consideration.



BEST EFFORTS DRAFTFAMILY LAW

1. Repeal head 26 of section 91 -- "Marriage and divorce".
2. Repeal head 12 of section 92 -- "The Solemnization of Marriage in the Province".
3. Add as new legislative authority provisions, the following sections:

Marriage  
jurisdiction

"1. The legislature of each province may make laws in relation to marriage in the province, including the validity of marriage in the province, except that Parliament has exclusive authority to make laws in relation to the recognition of a declaration that a marriage is void, whether granted within or outside Canada, and in relation to the jurisdictional basis upon which a court may entertain an application for a declaration that a marriage is void.

Divorce -  
provincial  
jurisdiction

2. (1) The legislature of each province may make laws in relation to divorce in the province and has exclusive authority to make laws in relation to relief ancillary thereto.

Divorce  
jurisdiction  
of Parliament

(2) Parliament may make laws in relation to divorce and has exclusive authority to make laws in relation to the recognition of divorces, whether granted within or outside Canada, and in relation to the jurisdictional basis upon which a court may entertain an application for a divorce.

Relationship  
between laws of  
provinces and  
laws of  
Parliament

(3) Where the legislature of a province enacts a law in relation to any matter over which it has concurrent authority with Parliament under this section, that law prevails in the province over any law of Parliament in relation to that matter to the extent of any inconsistency.



Declaration  
assuming  
authority

(4) The legislature of each province may declare that it is assuming authority in relation to all matters over which it has concurrent authority with Parliament under this section and, where the legislature so declares, notwithstanding subsection 3, all laws of Parliament in relation to those matters have no effect in that province while the declaration is in effect.

Effect of  
Order

3. An order for maintenance or custody made in Canada has legal effect throughout Canada.

Registration  
and enforcement  
of order

4. An order referred to in section 3 made in any province or territory may be registered in any other province or territory in a court of competent jurisdiction and shall be enforced in like manner as an order of that court.

Authority to  
make laws

5. The legislatures of the provinces may make laws to give effect to the provisions of sections 3 and 4 and may make laws providing for the variation and non-enforcement of orders by reason of a change in circumstances and, in addition, for the non-enforcement of orders on grounds of public policy or lack of due process of law.

Power of  
legislature  
to confer  
jurisdiction  
of superior  
court judges

6. Notwithstanding section [96], the legislature of each province may confer, or authorize the Lieutenant Governor of the province to confer, concurrently or exclusively, upon any court or division of a court or all or any judges of any court, the judges of which are appointed by the Governor General or by the Lieutenant Governor of the province, as the legislature may determine, the jurisdiction of a judge of a superior court of the province in respect of any matters within the field of family law."



4. Add as one of the transitional provisions, the following section:

Continuation  
of existing  
laws

"XX. Except as otherwise provided in this Act, all laws relating to marriage and divorce that are in force in Canada or any province immediately before the coming into effect of this Act continue in force in Canada and that province, respectively, until such time as they are repealed, altered or replaced by Parliament or the legislature of the province according to the authority of Parliament or the legislature under this Act." \*

\*NOTE: The wording of this general transitional section will need to be finalized later.



Amendment  
Alternative Formulations  
Regarding Inland Fisheries, Marine Plants  
and Sedentary Species

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Supported by  
Nine Provinces

- 92.1(1) The Legislature of each province may exclusively make laws in relation to:
- a) inland fisheries in the non tidal waters of the province;
  - b) marine and aquatic plants<sup>1</sup> in the non tidal waters of the province and in tidal waters in or adjacent to the province<sup>1</sup>;
  - c) sedentary species in tidal waters in or adjacent to the province;
  - d) aquaculture within the province and in tidal waters or adjacent to the province that is not included in either a), b) or c);
- (2) Notwithstanding paragraph 1(a) the Parliament of Canada may make laws in relation to the determination of total allowable catches for andromous species in non tidal waters and their allocation between provinces and any such law shall be paramount.



Amendment Regarding Sea Coast Fisheries

- (a) Section 91(12) of the British North America Act would be repealed.
- (b) A separate section in the British North America Act, in the following terms, would be enacted.

95A (1) With respect to fish stocks adjacent to each province (as defined in subsection (5) below), the Legislature may make laws relative to the sea coast fisheries but any law covering those matters set out in subsection (3) shall have effect in and for the province so long as they are not repugnant to any Act of the Parliament of Canada made under subsection (2).

(2) The Parliament of Canada may make laws relative to the sea coast fisheries but any law covering those matters set out in subsection (4) shall have effect in and for any or all of the provinces so long as they are not repugnant to any Act of the Legislature of a province made under subsection (1).

(3) The matters referred to in subsection (1) are:

- (a) fixing parameters for the total allowable catch for stocks;
- (b) the allocation of quotas to foreign countries and the licensing of foreign vessels;
- (c) conservation of fish stocks.

(4) The matters referred to in subsection (2) are:

- (a) fixing the level of catch within the parameters referred to in subsection (3) (a) and the issuance of quotas up to the level so fixed;
- (b) licensing of fishing vessels other than foreign vessels taking fish from the residual quota;
- (c) all matters not referred to in this subsection and subsection (3).



-- continued --

5. (a) The allocation of the fish stocks adjacent to each Provi shall be determined by agreement between the Provinces in accordance with equitable principles taking account of all relevant information including traditional fishing patterns.
- (b) If no agreement can be reached within a reasonable period of time, the Provinces concerned shall refer the particular matter in dispute for expeditious arbitration.



BEST EFFORTS DRAFTEQUALIZATION AND REGIONAL DEVELOPMENT

Governments of Manitoba and  
Saskatchewan Proposal  
(including Quebec's Proposal)

96(1) Without altering the legislative authority of Parliament or of the legislatures or of the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the Government of Canada and the Governments of the Provinces, are committed to

- (a) promoting equal opportunities for the well-being of Canadians;
- (b) furthering economic development to reduce disparity in opportunities; and,
- (c) providing essential public services of reasonable quality to all Canadians.

(2) Parliament and the Government of Canada are further committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.



BEST EFFORTS DRAFTAMENDMENTS TO THE CONSTITUTION OF CANADA

1. (1) Amendments to the Constitution of Canada may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and the assent by resolution of the Legislative Assembly in two-thirds of the provinces representing at least fifty percent of the population of Canada according to the latest general census.  
  
(2) Any amendment made under sub-section (1) affecting:
  - (a) the powers of the legislature of a province to make laws,
  - (b) the rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province,
  - (c) the assets or property of a province, or
  - (d) the natural resources of a province,shall have no effect in any province whose Legislative Assembly has expressed its dissent thereto by resolution prior to the issue of the proclamation, until such time as that Assembly may withdraw its dissent and approve such amendment by resolution.
2. A proclamation shall not be issued under Section 1 before the expiry of one year from the adoption of the resolution initiating the amendment procedure thereunder, unless the legislative assembly in each province has previously adopted a resolution of assent or dissent.



3. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces including any such amendment made to provincial boundaries may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and the assent by resolution of the Legislative Assembly of each Province to which an amendment applies.
4. An amendment may be made by proclamation under section 1, 3 or 9 without a resolution of the Senate authorizing the issue of the proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the ninety days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety days.
5. The following rules apply to the procedures for amendment described in sections 1, 3 and 9
  - 1) either of these procedures may be initiated by the Senate or the House of Commons or the Legislative Assembly of a Province,
  - 2) a resolution of authorization or assent made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized or assented to by it,
  - 3) a resolution of dissent made for the purposes of this Part may be revoked at any time before or after the issue of a proclamation.
6. The Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada, in relation to the executive Government of Canada and the Senate and House of Commons.



7. In each Province the Legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the Province.

8. Notwithstanding sections 6 and 7, the following matters may be amended only in accordance with the procedure in section 1(1):

- 1) the office of the Queen, of the Governor General and of the Lieutenant-Governor,
- 2) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada and the Legislatures,
- 3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies,
- 4) the powers of the Senate,
- 5) the number of members by which a Province is entitled to be represented in the Senate and the residence qualifications of Senators.
- 6) the right of a Province to a number of members in the House of Commons not less than the number of Senators representing the Province,
- 7) the principles of Proportionate representation of the Provinces in the House of Commons prescribed by the Constitution of Canada, and
- 8) the use of the English or French language.



9. 1) No amendment to section 1 of this Part, this section, or to any provision in the Constitution with respect to the procedure for altering provincial boundaries shall come into force unless it is authorized in by resolutions of the Senate and House of Commons and assented to by resolution of the Legislative Assemblies of all the provinces.
- 2) The procedure prescribed in section o of this Part may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada but, subject to the limitations contained in subsection (1) of this section that procedure may nonetheless be used to amend any provision for amending the Constitution.
10. The enactments set out in the Schedule shall continue as law in Canada and as such shall, together with this Act, collectively be known as the Constitution of Canada, and amendments thereto shall henceforth be made only according to the authority contained therein.



CANADIAN CONSTITUTIONAL

CHARTER

1971



## PART IX

### AMENDMENTS TO THE CONSTITUTION

Art. 49. Amendments to the Constitution of Canada may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assemblies of at least a majority of the Provinces that includes

- (1) every Province that at any time before the issue of such proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada;
- (2) at least two of the Atlantic Provinces;
- (3) at least two of the Western Provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Western Provinces.

Art. 50. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of each Province to which an amendment applies.

Art. 51. An amendment may be made by proclamation under Article 49 or 50 without a resolution of the Senate authorizing the issue of the proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the ninety days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety days.



Art. 52. The following rules apply to the procedures for amendment described in Articles 49 and 50:

- (1) either of these procedures may be initiated by the Senate or the House of Commons or the Legislative Assembly of a Province;
- (2) a resolution made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

Art. 53. The Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada, in relation to the executive Government of Canada and the Senate and House of Commons.

Art. 54. In each Province the Legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the Province.

Art. 55. Notwithstanding Articles 53 and 54, the following matters may be amended only in accordance with the procedure in Article 49:

- (1) the office of the Queen, of the Governor General and of the Lieutenant-Governor;
- (2) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada and the Legislatures;
- (3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies;
- (4) the powers of the Senate;
- (5) the number of members by which a Province is entitled to be represented in the Senate, and the residence qualifications of Senators;
- (6) the right of a Province to a number of members in the House of Commons not less than the number of Senators representing the Province;



- (7) the principles of proportionate representation of the Provinces in the House of Commons prescribed by the Constitution of Canada; and
- (8) except as provided in Article 16, the requirements of this Charter respecting the use of the English or French language.

Art. 56. The procedure prescribed in Article 49 may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada, but that procedure may nonetheless be used to amend any provision for amending the Constitution, including this Article, or in making a general consolidation and revision of the Constitution.

Art. 57. In this Part, "Atlantic Provinces" means the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, and "Western Provinces" means the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta.



ECONOMIC UNION

## (SASKATCHEWAN PROPOSAL)

121. (i) Without altering the legislative or other authority of Parliament or the legislatures or of the Government of Canada or the governments of the Provinces or the rights of any of them with respect to the exercise of their respective legislative or other authority:
- (a) Parliament and the legislatures, together with the Government of Canada and the governments of the Provinces, are committed to
    - (i) the maintenance and enhancement of the Canadian economic union,
    - (ii) the movement throughout Canada of persons, goods, services and capital without discrimination by Canada or any Province, by law or practice, in a manner that unjustifiably impedes the operation of the Canadian economic union, and
    - (iii) the harmonization of federal and provincial laws, policies, and practices that affect the Canadian economic union; and
  - (b) pursuant to the commitments specified in clause (a), the Government of Canada and the governments of the Provinces are committed to the ongoing, systematic and co-operative review by them of the operation of the Canadian economic union.



QUEBEC PROPOSALPREAMBLE AND STATEMENT OF PURPOSE OF THE CONSTITUTION

In accordance with the will of Canadians, it is the will of the provinces of Canada, in consort with the federal government, to remain freely united in a federation, as a sovereign and independent country, under the Crown of Canada, with a constitution similar in principle to that which has been in effect in Canada; \*

THE FUNDAMENTAL PURPOSE of the Federation is to preserve and promote freedom, justice and well-being for all Canadians, by:

PROTECTING individual and collective rights, including those of the native people; \*

ENSURING that laws and political institutions are founded on the will and consent of the people;

FOSTERING economic opportunity, and the security and fulfillment of Canada's diverse cultures;

RECOGNIZING the distinctive character of the people of Quebec which, with its French-speaking majority, constitutes one of the foundations of the Canadian duality;

CONTRIBUTING to the freedom and well-being of all mankind.

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\* This phrase is subject to acceptance by the native leadership.





NOTES  
FOR A STATEMENT  
ON THE  
ENTRENCHMENT OF A CHARTER OF RIGHTS  
BY  
STERLING LYON  
PREMIER OF MANITOBA.

FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION  
9 SEPTEMBER 1980.

NOTES ONLY - CHECK AGAINST DELIVERY.



PRIME MINISTER:

WHILE MANITOBA ACTIVELY SUPPORTS THE PROTECTION OF HUMAN RIGHTS, IT OPPOSES THE ENTRENCHMENT OF A CHARTER OF RIGHTS ON PRINCIPLE. OUR OPPOSITION IS NOT A BARGAIN TACTIC DESIGNED TO GAIN CONCESSIONS ELSEWHERE IN THESE DISCUSSIONS. WE, AND OTHER PROVINCES, FIND ENTRENCHMENT TO BE TOTALLY CONTRARY TO OUR TRADITIONAL AND SUCCESSFUL PARLIAMENTARY GOVERNMENT AND THEREBY NOT IN THE BEST INTERESTS OF CANADIANS.

WE WOULD SUGGEST THAT THE ONUS IS ON THOSE WHO ADVOCATE CHANGE TO DEMONSTRATE THAT CHANGE IS NEEDED, AND THAT IT WILL BE BENEFICIAL, NOT HARMFUL. WITH RESPECT TO THE ENTRENCHMENT OF A CHARTER OF RIGHTS, WE BELIEVE THAT ONUS HAS NOT - AND CANNOT - BE DISCHARGED.

THE QUESTION BEFORE US IS NOT WHETHER THE RIGHTS OF INDIVIDUALS SHOULD BE PROTECTED. ALL OF US AT THIS TABLE ARE DEEPLY COMMITTED TO PROVIDING SUCH PROTECTION.



EACH OF OUR GOVERNMENTS - THROUGH SUCH LEGISLATION AS HUMAN RIGHTS ACTS, EMPLOYMENT STANDARDS ACTS, ACTS GOVERNING HEALTH AND SAFETY IN THE WORK PLACE, AND THE KINDS OF MEASURES TO PROTECT THE RIGHTS OF WOMEN AND CHILDREN THAT OUR ATTORNEY GENERAL SPOKE OF YESTERDAY - HAS ALREADY TAKEN REAL AND SUBSTANTIVE AND EFFECTIVE STEPS TO ASSURE AND PROTECT THE RIGHTS OF OUR CITIZENS.

THE REAL QUESTION BEFORE US IS HOW BEST TO DEFINE AND PROTECT THE RIGHTS OF CANADIANS.

THE SYSTEM OF PARLIAMENTARY RESPONSIBLE DEMOCRACY WHICH EXISTS IN CANADA RECOGNIZES AND PROTECTS THE RIGHTS OF OUR CITIZENS ON AN EVOLVING BASIS, WITHOUT MAKING JUDGMENTS AS TO WHICH RIGHTS ARE FUNDAMENTAL AND WHICH ARE OF ONLY SECONDARY IMPORTANCE.

A DECISION TO ENTRENCH A CHARTER OF RIGHTS, PRIME MINISTER, WOULD, IN EFFECT, MOVE OUR FAMILIAR AND TRADITIONAL AND SUCCEFUL PARLIAMENTARY FORM OF GOVERNMENT TOWARDS THAT OF A REPUBLICAN SYSTEM - REPLACING A SYSTEM OF PROTECTION OF RIGHTS THAT HAS WORKED IN CANADA FOR 113 YEARS WITH A SYSTEM THAT, WITH RESPECT, HAS NOT WORKED AS WELL IN THE UNITED STATES.



INFRINGEMENTS OF WHAT MIGHT BE CONSIDERED BASIC RIGHTS ARE RARE IN OUR HISTORY AS A NATION. THE MOST OBVIOUS AND MOST CITED EXAMPLE - THE TREATMENT OF JAPANESE-CANADIANS DURING THE SECOND WORLD WAR - WAS PARALLELED BY SIMILAR TREATMENT OF JAPANESE-AMERICANS, DESPITE THE FACT THAT THE U.S. HAS, AND HAD, AN ENTRENCHED BILL OF RIGHTS.

THERE IS NO HISTORICAL JUSTIFICATION FOR THE ENTRENCHMENT OF A CHARTER OF RIGHTS IN THE CANADIAN CONSTITUTION. THE NEED FOR SUCH A FUNDAMENTAL CHANGE IN OUR SYSTEM CANNOT BE DEMONSTRATED.

AND APART FROM THE ABSENCE OF HISTORICAL JUSTIFICATION FOR THIS PROPOSAL, WE OPPOSE THE CONCEPT ON THE BASIS OF THE FOLLOWING PRINCIPLES:

1. AN ENTRENCHED CHARTER OF RIGHTS WOULD REMOVE THE SUPREMACY OF PARLIAMENT AND OF LEGISLATURES, WHICH, BECAUSE IT LEAVES THE DETERMINATION AND PROTECTION OF RIGHTS IN THE HANDS OF ELECTED AND ACCOUNTABLE REPRESENTATIVES OF THE PEOPLE, IS A CORNERSTONE OF OUR PARLIAMENTARY SYSTEM OF GOVERNMENT.
2. PARLIAMENT AND LEGISLATURES ARE BETTER EQUIPPED TO RESOLVE SOCIAL ISSUES THAN JUDGES WHO ARE NOT ACCOUNTABLE TO THE PEOPLE.



3. AN ENTRENCHED CHARTER WOULD INVOLVE THE COURTS IN POLITICAL MATTERS, A FACT RECOGNIZED BY MANY JURISTS, INCLUDING FORMER SUPREME COURT JUSTICE PIGEON, WHO HAS RECENTLY POINTED OUT THAT ENTRENCHING A CHARTER OF RIGHTS, GRANTS TO THE COURTS AN IMPORTANT PART OF THE LEGISLATIVE POWERS NOW VESTED IN PARLIAMENT.
4. ENTRENCHMENT INVOLVES A LOSS OF JUDICIAL IMPARTIALITY AND JUDICIAL INDEPENDENCE - TWO CORNERSTONES OF OUR PRESENT RESPECTED JUDICIARY.
5. STATUTE LAW, BECAUSE IT CAN BE MORE EASILY AMENDED, PERMITS MORE FLEXIBLE RESPONSE TO SOCIAL AND OTHER CHANGES SO AS TO BETTER PROTECT THE RIGHTS OF CITIZENS.
6. AN ENTRENCHED CHARTER WOULD ENCOURAGE LITIGATION WITH RESPECT TO LEGISLATION AND INTRODUCE A DANGEROUS ELEMENT OF UNCERTAINTY INTO THE PROCESSES OF GOVERNMENT.
7. AN ENTRENCHED CHARTER, BY ITS INFLEXIBILITY, WOULD INHIBIT THE DEVELOPMENT AND ACKNOWLEDGEMENT OF NEW RIGHTS, SUCH AS THE RIGHTS OF HANDICAPPED PEOPLE, OR THE RIGHT TO PRIVACY.



PRIME MINISTER, AS PROFESSOR G.P. BROWNE OF CARLETON UNIVERSITY HAS POINTED OUT, SUCH A "TRANSFER OF LEGISLATIVE AUTHORITY WOULD AMOUNT TO A CONSTITUTIONAL REVOLUTION, ENTAILING THE RELINQUISHMENT OF THE ESSENTIAL PRINCIPLE OF PARLIAMENTARY DEMOCRACY: THE PRINCIPLE OF PARLIAMENTARY SUPREMACY".

LET ME REPLY BRIEFLY TO THE ARGUMENTS ADVANCED IN FAVOUR OF AN ENTRENCHED CHARTER OF RIGHTS.

FIRST - IT IS SUGGESTED THAT SUCH AN ASSERTION OF A COMMITMENT TO FUNDAMENTAL RIGHTS SERVES TO GUARANTEE THOSE RIGHTS.

BUT WE ALL KNOW THAT THE VILEST DICTATORSHIPS CAN BOAST THE MOST ELABORATE BILL OF RIGHTS. THE REAL PROTECTION OF RIGHTS LIES IN THE COMMITMENT OF PEOPLE AND GOVERNMENTS TO SEE THEM PROTECTED AND ENHANCED - AS THEY HAVE BEEN PROTECTED AND ENHANCED IN CANADA THROUGH OUR PARLIAMENTARY FORM OF GOVERNMENT.

SECONDLY, IT IS ARGUED THAT ENTRENCHMENT OF RIGHTS RENDERS THEM IMMUTABLE.



BUT PRIME MINISTER, RIGHTS REQUIRE INTERPRETATION, AND EVERY COUNTRY WITH A BILL OF RIGHTS HAS BEEN OBLIGED TO REDFINE THE SO-CALLED "IMMUTABLE" RIGHTS IN RESPONSE TO SOCIAL AND OTHER CHANGES. THE MEANING OF THESE SO-CALLED "IMMUTABLE" RIGHTS IS OFTEN FAR FROM CLEAR. EVEN THE MOST FUNDAMENTAL OF ALL RIGHTS - THE RIGHT TO LIFE - HAS BEEN VARIOUSLY INTERPRETED IN ACCORDANCE WITH VARYING OPINIONS ABOUT ABORTION, EUTHENASIA, AND CAPITAL PUNISHMENT.

THIRDLY, IT IS ARGUED THAT SUCH AN ENTRENCHED CHARTER HAS SYMBOLIC AND EDUCATIONAL VALUE. WE ALREADY ENJOY THESE ALLEGED ADVANTAGES WITH OUR FEDERAL AND PROVINCIAL BILLS OF RIGHTS.

PRIME MINISTER, BILLS OF RIGHTS DEFINE GENERAL RIGHTS IN SUCH ELOQUENT TERMS AS "FREEDOM OF RELIGION" AND "FREEDOM OF EXPRESSION". BUT WHAT RIGHTS DO SUCH BROAD PHRASES ACTUALLY CONFER, AND BY WHOM ARE THEY DETERMINED?

DOES FREEDOM OF RELIGION MEAN THAT WE CAN NO LONGER HAVE PRAYERS IN SCHOOLS? DOES IT MEAN THAT GOVERNMENTS CANNOT COMBAT CULT ACTIVITY? DOES FREEDOM OF EXPRESSION MEAN WE CANNOT COMBAT PORNOGRAPHY OR CENSOR OR CLASSIFY FILMS TO REFLECT OUR COMMUNITY VALUES? DOES



FREEDOM OF RELIGION MEAN WE CAN NO LONGER EXEMPT CHURCH PROPERTY FROM TAXATION?

OF COURSE, AN ENTRENCHED CHARTER CAN RECOGNIZE JUSTIFIABLE LIMITATIONS TO FUNDAMENTAL RIGHTS. BUT WHO DECIDES WHAT LIMITATIONS ARE JUSTIFIABLE?

ONCE SUCH A CHARTER IS ENTRENCHED, THESE DECISIONS WILL BE MADE - NOT BY THE PEOPLE THEMSELVES THROUGH THEIR ELECTED AND ACCOUNTABLE REPRESENTATIVES - BUT BY JUDGES APPOINTED BY GOVERNMENTS TO SERVE UNTIL MANDATORY RETIREMENT AGE.

THROUGHOUT OUR HISTORY, PRIME MINISTER, OUR RIGHTS HAVE BEEN PROTECTED BY THOSE THE PEOPLE ELECT TO REPRESENT THEM. I CAN SEE NO REASON TO TRANSFER THAT FUNCTION AND RESPONSIBILITY TO APPOINTEES WHO, HOWEVER CAPABLE IN THEIR OWN AREAS, ARE NOT INVOLVED WITH THE CONSEQUENCES THAT RECOGNITION OF RIGHTS HAS ON ECONOMIC RESOURCES, NOR WITH THE NEED FOR PRAGMATIC COMPROMISES.

PRIME MINISTER, YOU HAVE DESCRIBED THE ENTRENCHMENT OF A CHARTER OF RIGHTS AS A MECHANISM THAT WOULD GIVE MORE POWER TO THE PEOPLE. IN FACT, SIR, IT TAKES POWER FROM THE PEOPLE AND PLACES IT IN THE HANDS OF MEN, ALBEIT MEN LEARNED IN LAW, BUT NOT NECESSARILY AWARE OF EVERY DAY CONCERNS OF CANADIANS.



THE CANADIAN RECORD ON THE PROTECTION OF RIGHTS IS ENVIABLE. WE HAVE NOT HAD THE EXPERIENCE OF OUR NEIGHBOURS TO THE SOUTH, WHERE JUDGES CREATE RIGHTS - ON OCCASION IN DIRECT DEFIANCE OF THE PEOPLE'S ELECTED AND ACCOUNTABLE REPRESENTATIVES - AND, IN THE PROCESS, DICTATE SOCIAL POLICY. NOR HAVE WE HAD THE EXPERIENCE OF SIGNIFICANT RIGHTS, ENTRENCHED IN THE CONSTITUTION, INHIBITING THE DEVELOPMENT OF NEW RIGHTS. FOR EXAMPLE, THE RIGHT OF AMERICANS TO BEAR ARMS HAS HINDERED THE DEVELOPMENT OF EFFECTIVE GUN CONTROL LEGISLATION.

THEIR WAY WOULD NOT SUIT US. LET US RETAIN OUR OWN HERITAGE AND REJECT EXPERIMENTS WITH CONCEPTS FOREIGN TO OUR TRADITION.

IN CANADA, LIBERTIES ARE NO LESS VALUED NOR IN PRACTICE LESS SECURE THAN IN THE U.S. CANADIANS HAVE PREFERRED TO GIVE ULTIMATE RESPONSIBILITY FOR THE PROTECTION OF THEIR RIGHTS TO THEIR ELECTED REPRESENTATIVES RATHER THAN TO THEIR JUDGES.

IT SHOULD NOT BE OVERLOOKED THAT THE MOST COMPREHENSIVE STUDY OF HUMAN RIGHTS - THE McRUER COMMISSION IN ONTARIO DID NOT RECOMMEND THE CONCEPT OF ENTRENCHMENT.



ONE ALSO REMEMBERS THE WORDS OF THE FORMER PREMIER OF BRITISH COLUMBIA, THE LATE W.A.C. BENNETT, WHO, IN DISCUSSING A SIMILAR PROPOSAL AT A CONSTITUTIONAL CONFERENCE SOME TWELVE YEARS AGO, MADE THE FOLLOWING OBSERVATION:

" . . . EVEN AN INCOMPLETE STUDY OF THESE PROPOSALS REVEALS THAT WE ARE BEING ASKED TO DISCARD THE CONSTITUTIONAL PHILOSOPHY OF 1867, AND EMBRACE THE CONSTITUTIONAL PHILOSOPHY OF 1776."

AS PROFESSOR BROWNE NOTED: CANADIANS MUST UNDERSTAND CLEARLY WHAT IS AT STAKE. THE QUESTION IS NOT WHETHER WE SHOULD HAVE A BILL OF RIGHTS, BUT WHETHER WE SHOULD ENTRENCH IT. THIS MEANS, IN PRACTICAL TERMS, THAT WE MUST DECIDE WHETHER TO LEAVE THE ULTIMATE RESPONSIBILITY FOR DEFINING OUR CIVIL LIBERTIES WITH THE FEDERAL AND PROVINCIAL PARLIAMENTS, OR TO HAND IT OVER TO THE SUPREME COURT.

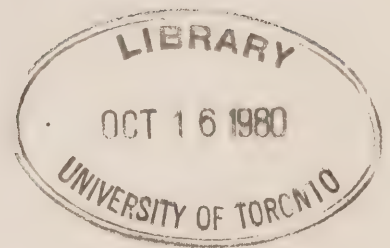
OUR CONSTITUTIONAL HISTORY, GOVERNMENTAL SYSTEM, FEDERAL STRUCTURE, CULTURAL NEEDS AND SOCIAL IDEALS, ALL DICTATE THE ANSWER. OUR ELECTED AND ACCOUNTABLE REPRESENTATIVES MUST RETAIN THE ULTIMATE AUTHORITY TO DEFINE AND REFLECT OUR BASIC SOCIAL VALUES AS A NATION.



Government  
Publications

FEDERAL-PROVINCIAL CONFERENCE  
OF  
FIRST MINISTERS ON THE CONSTITUTION

Premier Hatfield  
and  
The Discussion  
on  
"Communications"  
Monday, September 8, 1980



Ottawa  
September 8-12, 1980



Premier,

You might be interested to know that yesterday just as you started to speak on "Communications", the CBC affiliate in Saint John (CHSJ-TV) interrupted by saying words to mean - we are terminating our coverage of the First Ministers Conference on the Constitution for the day.



Governor  
Publication

FEDERAL-PROVINCIAL CONFERENCE  
OF  
FIRST MINISTERS ON THE CONSTITUTION

NOTES FOR REMARKS BY  
THE HONOURABLE WILLIAM G. DAVIS  
ON  
LANGUAGE POLICY

Ottawa  
September 8-12, 1980



I FEEL COMPELLED TO MAKE ONE  
ADDITIONAL FUNDAMENTAL POINT WITH RESPECT TO THE  
QUESTION OF LANGUAGE RIGHTS. I WANT THIS  
STATEMENT ON THE RECORD HERE AND THROUGHOUT THE  
COUNTRY.

ONTARIO HAS ALWAYS ACTED, ADMINISTRATIVELY,  
TO ENSURE THAT THE FIVE PERCENT OF OUR POPULATION WHO  
ARE FRENCH-SPEAKING ARE ADEQUATELY AND REASONABLY  
SERVED IN THEIR OWN LANGUAGE.

ONTARIO WAS ONE OF THE VERY FIRST IF  
NOT THE FIRST TO CALL FOR THE GUARANTEE OF MINORITY  
LANGUAGE EDUCATION RIGHTS FOR MINORITIES THROUGHOUT  
CANADA, IN A NEW CONSTITUTION.

ONTARIO HAS AN EXPANSIVE PUBLIC FRENCH  
LANGUAGE SCHOOL SYSTEM SERVING ONE HUNDRED THOUSAND  
FRENCH-SPEAKING RESIDENTS OF OUR PROVINCE AND OPEN  
TO THE FRENCH-SPEAKING CITIZENS OF ALL OTHER PROVINCES  
WHO CHOOSE TO MOVE TO ONTARIO.



BILINGUAL TRIALS ARE A REALITY IN ONTARIO.

LEVELS OF SERVICE THROUGHOUT OUR PROVINCE WHERE NUMBERS WARRANT ARE A MATTER OF FACT AND POLICY.

TO FORCE INSTITUTIONAL BILINGUALISM ON ONTARIO, WITH A POPULATION THAT IS NINE-FIVE PERCENT ENGLISH-SPEAKING, WOULD BE A GREAT MISTAKE.

ONTARIO CONTINUES TO PROCEED AT ITS OWN STEADY, FAIR AND PRACTICAL PACE. WE WILL NOT BE FORCED INTO INSTITUTIONAL BILINGUALISM. WE WILL NOT HAVE THE RELATIONSHIPS IN OUR PROVINCE, BETWEEN OUR TWO FOUNDING PEOPLES AND OUR CANADIANS FROM THE THIRD FORCE, ADVERSELY AFFECTED BY BACKLASH, FEAR AND MISTRUST.

WE HAVE INDICATED ALL ALONG WHERE WE STAND ON THIS ISSUE TO FEDERAL NEGOTIATORS.

WE HAVE PROVIDED ENCOURAGEMENT AND LEADERSHIP ON MINORITY LANGUAGE EDUCATION RIGHTS WHERE NUMBERS WARRANT ACROSS CANADA.



WE WILL NOT BE PUSHED ON ANY FORCED  
OR MISGUIDED BILINGUALIZATION OF THE INSTITUTIONS  
OF OUR PROVINCE.

OUR PROVINCE WILL NOT BE MADE SOMETHING  
OTHER THAN IT IS - A PRAGMATIC HUMANE AND TOLERANT  
SOCIETY SERVING ITS MINORITIES WITH JUSTICE AND  
SENSITIVITY, WHILE PRESERVING OUR FUNDAMENTAL  
AND HISTORIC IDENTITY AS A MAJORITY ENGLISH-SPEAKING  
PROVINCE.



Government  
Publications

NOTES FOR THE USE OF  
THE HONOURABLE WILLIAM G. DAVIS  
PREMIER OF ONTARIO  
AT THE CONFERENCE OF FIRST MINISTERS  
ON THE CONSTITUTION

Ottawa, September 8 - 12, 1980

CHARTER OF RIGHTS



Ontario supports the entrenchment in the constitution of a Charter of Rights because we believe that governments and the people must make an explicit commitment to the preservation and enhancement of the liberties of individuals. In this way our democracy will be rooted in the consciousness of every Canadian and thereby strengthened.

A statement of our rights should:

1. affirm our commitment to the fundamental freedoms and democratic rights that underpin our democracy;
2. declare and preserve such basic legal rights which are best served by inclusion in a Charter of Rights;
3. reaffirm the obligation of the Parliament of Canada and federal institutions to operate in both official languages;
4. ensure the availability of minority language education throughout Canada where numbers warrant; and



5. provide criminal trials in the official language of the accused.

I should like to stress the importance Ontario attaches to the principle of minority language education. We believe it is a fundamental principle of Canadian life that a child, whether he or she be part of the French-speaking or English-speaking minority in any province, should be able to receive his or her education in his or her mother tongue.

Ontario is proud of the fact, that, if a French-speaking Quebecer comes to work in Ontario, he can educate his children in French throughout his primary, secondary and tertiary education; we believe Canadians who speak English should have that right in Quebec; we believe all Canadians should have that right nationwide.

Similarly, we believe that an accused should be tried in the official language he chooses anywhere in Canada, so that no citizen will be placed at a disadvantage before the courts because of the official language he speaks.



We live in a pluralistic society made up of different ethno-cultural groups whose aspirations to live and grow in freedom demand guarantees of their right of choice in the preservation and development of their respective cultural and linguistic heritage. Despite the fairness of our British parliamentary system, the sovereignty of Parliament and British jurisprudence, a charter of political rights with some legal rights, would reinforce the sense of freedom and protection which all our people possess, thereby contributing directly to real freedom for all of us.

When we talk of rights, we must always keep in mind the rights of Canada's native peoples, which is a matter of great concern to them and all of us. While we are dealing in the proposals before us primarily with individual rights, Ontario is certainly committed to an early discussion in the second round of our negotiations to work out the best method of enshrining native rights in the constitution.

A Charter of Rights must embody respect for minority rights and individual liberties, while remaining true to Canadian traditions.



DATE: Sept. 10, 1980

DOCUMENT: 800-14/076

## ENTRENCHMENT OF RIGHTS

### FUNDAMENTALLY WRONG: LYON

The entrenchment of a charter of rights will fundamentally alter our parliamentary system in Canada, Manitoba Premier Sterling Lyon cautioned today.

Speaking at the First Ministers Constitutional Conference in Ottawa, Premier Lyon emphasized that a decision to entrench a charter of rights would in effect move our traditional and successful parliamentary form of government in Canada, towards that of a republican system such as exists in the United States. In Canada, he stated, our system of protecting human rights through our democratically elected officials has worked extremely well for 113 years, while in the United States, the entrenchment of human rights has caused countless problems.

"We have not had the experience of our neighbours to the south, where judges create rights - on occasion in direct defiance of the people's elected and accountable representatives - and, in the process, dictate social policy. Nor have we had the experience of significant rights, entrenched in the constitution, inhibiting the development of new rights, such as the rights of handicapped people, or the right to privacy."





DATE: Sept. 10, 1980

2 -

Premier Lyon emphasized, that the United States system of government is not our way, it does not suit us. "Let us retain our own heritage and reject experiments with concepts foreign to our tradition".

The question before us, Premier Lyon said, is not whether the rights of individuals should be protected, but how best to define and protect the rights of Canadians.

The Premier said, in practical terms, we are deciding on whether to leave the ultimate responsibility for defining our civil liberties with our elected representatives, or hand it over to our judges, who are not accountable to the people. I suggest that the decision is obvious.

Manitoba's position was broadly supported by a majority of the provinces.



Government  
Publications

FEDERAL-PROVINCIAL CONFERENCE  
OF  
FIRST MINISTERS ON THE CONSTITUTION

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CONFERENCE FEDERALE-PROVINCIALE  
DES  
PREMIERS MINISTRES SUR LA CONSTITUTION



Transcript of  
Mr. René Lévesque's  
Remarks on the Charter of Rights

Transcription de  
l'intervention de M. René Lévesque  
sur la Charte des droits

QUEBEC

Ottawa  
September 8-12, 1980

Ottawa  
du 8 au 12 septembre 1980



LE PRESIDENT: Je fais maintenant appel au premier ministre Lévesque.

HON. RENE LEVESQUE: Monsieur le président, je vais commencer par demander un peu plus de patience que d'habitude, suivant en cela l'exemple de mes collègues des autres provinces qui m'ont précédé, parce qu'il s'agit vraiment d'un sujet essentiel et aussi parce qu'une partie des catégories, une des catégories qui sont inscrites dans le projet de charte touche directement à des choses qui sont absolument fondamentales pour le Québec dans le domaine de la culture et de l'éducation.

Juste en passant j'espère que la traduction est un peu meilleure qu'elle l'a été depuis le début, je ne mets pas en doute sûrement la bonne volonté des traducteurs -- et si je le dis -- c'est parce que c'est la seule fois où forcément va être évoquée -- et sur un sujet encore une fois fondamental -- ce qu'on appelle la dualité du Canada et vous savez, je regardais les journaux ce matin, je regardais les manchettes de Toronto et les manchettes de Montréal, toutes les deux en anglais, les "headlines" qui disaient strictement des choses différentes.

On a très très souvent l'impression que l'information, l'éclairage de l'opinion ne traverse pas beaucoup la frontière de l'Outaouais surtout, et ça nous donne terriblement l'impression parfois d'être devant deux solitudes encore comme



Hugh MacLuhan le disait dans son vieux roman de tant d'années... En tout cas, ce que j'ai à dire vaut pas son pesant d'or, mais comme les autres -- et c'était visible ce matin -- j'y ai pensé, on y a pensé profondément chez nous.

Je voudrais commencer par remercier monsieur Hatfield du Nouveau-Brunswick, qui m'a précédé, parce que monsieur Hatfield est un grand voyageur, il l'a dit, il va aux Etats-Unis, il va en Argentine, je pense que vous savez qu'il vient très souvent au Québec aussi, et cette expérience vécue de l'évolution du Québec lui a permis -- je suis pas d'accord avec plusieurs des choses qu'il a dites c'est normal -- mais, lui a permis de rendre au Québec et à la situation du Québec un hommage pour lequel, je crois, nous devons le remercier.

Je vais vous surprendre, monsieur le président, je voudrais vous féliciter vous-même d'avoir eu -- je pense -- depuis soixante-dix-huit ('78), -- enfin, moi, c'est dans mes souvenirs personnels à ce moment-là, que ça a commencé -- d'avoir eu l'idée de provoquer un débat aussi riche, de nous avoir forcés -- et on l'a vu ce matin, et on le voit depuis le début de la séance -- à réfléchir plus que jamais sur un sujet absolument essentiel, qui touche à la nature même de la société et aussi à son degré de civilisation.

Je vais commencer par dire sur le



fond rapidement où je me situe, où nous nous situons, nous, du Québec.

Première chose, c'est que nous ne croyons pas, dans l'état actuel des choses, que les droits fondamentaux soient en danger au Canada.

Est-ce qu'ils seraient plus en sécurité s'ils étaient -- pour employer le terme à la mode -- enchassés, "entrenched", constitutionnellement, moi, je ne le crois pas.

J'ai écouté les arguments de principe, les arguments vécus aussi de juristes d'expérience, d'expérience pratique et non pas d'expérience académique comme le premier ministre du Manitoba, ou le premier ministre de la Saskatchewan, le premier ministre d'Alberta, ce qui ne diminue en rien les mérites des autres qui ont une autre opinion, mais, moi, je crois, comme les trois (3) que je viens de nommer que ce n'est pas la meilleure façon, ça serait à tout le moins prématuré, que de prétendre enchasser toute cette salade, là, de catégories de droits qu'on trouve dans le projet qui est devant nous.

Pour ce qui est du Québec, non seulement, il est aussi fermement et résolument favorable à la protection des droits fondamentaux, des droits individuels des citoyens, mais il s'est engagé sur cette voie depuis plusieurs années déjà, et moi je crois qu'on peut aisément affirmer -- et je suis fier de le dire -- parce que je crois que c'est profondément vrai que la charte québécoise des droits



et libertés de la personne, si on l'additionne à ce qui constitue la déclaration fédérale des droits, offre actuellement aux citoyens du Québec non pas une des protections les plus larges, mais la protection la plus large et la plus complète qu'on puisse trouver au Canada.

Comme on l'a dit auparavant, c'est une loi centrale et une loi dominante, c'est-à-dire qu'elle régit toutes les autres qui l'ont suivie, sauf une ou deux exceptions -- et je reviendrai rapidement là-dessus, parce que c'est important -- une ou deux exceptions où justement il a fallu sortir de la Charte pour pouvoir faire avancer des droits. Et ça, je crois que ça rejoint certains des arguments qui ont été donnés ce matin.

Je crois que l'évolution de cette charte comme des chartes qui existent ailleurs, les chartes équivalentes qui existent ailleurs au Canada, et qui se fait normalement par en avant, c'est-à-dire dans le sens du progrès, dans le sens d'une meilleure définition des droits est beaucoup plus prometteuse pour une santé toujours meilleure au point de vue de cette qualité de la vie et du respect des droits que l'enchassement et la rigidité constitutionnelle prématurée.

Je dis que les droits sont pas en danger, bien, pas plus au Québec qu'ailleurs. Je crois que si on regarde simplement ce qui s'est fait, ce qui se fait, ce qui a été consigné dans nos



textes, ce qui régit nos lois, ce qui régit le Parlement, qu'il y a une protection qui est unanimement acceptée au Québec comme ailleurs pour les grandes libertés fondamentales, la liberté de religion, la liberté de pensée, la liberté d'expression, la liberté de presse, si vous voulez, de même que, un respect de tous les principes fondamentaux de la démocratie. Ça existe et c'est respecté et c'est protégé au Québec, -- comme j'en suis sûr -- partout de l'Atlantique au Pacifique.

Donc, la question que soulève la demande ou le projet fédéral d'adopter une charte constitutionnelle, c'est pas plus pour les autres que pour nous, mais pour nous c'est pas... est-ce que le Québec entend protéger les droits des citoyens, mais plutôt quel est le meilleur moyen de protéger les droits des citoyens.

Donc, avant de souscrire à une charte, quelle qu'elle soit, on doit être convaincus, nous, québécois comme les autres qui ont parlé avant moi, que l'inscription constitutionnelle, l'enchâssement, là, la fixation des droits, offre la protection la plus efficace aux citoyens et ensuite aussi que les droits qu'on inscrit ont un sens et une portée non seulement connue, mais partager par l'ensemble de tous les canadiens.

C'est sûr qu'on connaît les avantages, c'est facile et ceux qui veulent tout simplifier peuvent toujours simplifier, c'est facile d'évoquer les avantages évidents qu'il y a dans une charte des



droits constitutionnels, ça rend les droits plus intangibles, c'est sûr, ça interdit à quiconque -- y compris le parlement -- de déroger aux principes qui sont dans la charte, on dit aussi -- c'est pas toujours vrai -- mais il y a au moins des chances que ça arrive, que la solennité d'une charte, parce que c'est enchâssé, c'est proclamé, ça confère un caractère symbolique, éducatif, susceptible d'inspirer le respect, autrement dit ça peut avoir une valeur de modèle de comportement, mais seulement il faut voir aussi l'autre plateau de la balance.

Je passe rapidement, mais je voudrais quand même noter que si on enchâssait une charte des droits avec toutes les catégories qui sont là, on pourrait compliquer encore -- c'est pas ça qui est peut-être le plus fondamental, mais c'est ça qui nous a réunis cette semaine -- on pourrait compliquer encore le problème des relations entre les niveaux de gouvernements.

Monsieur le premier ministre de la Saskatchewan a souligné à juste titre à quel point du droit nouveau quand on n'a pas un partage des droits convenable, un partage des droits satisfaisant, un partage des pouvoirs aussi c'est surtout ce que je voulais dire, à quel point ça peut être bousculé par des décisions judiciaires qui, littéralement, créent des morceaux complets de constitution au-delà de la démocratie parlementaire.

J'ai l'exemple des communications qui



a été évoqué hier où à partir du télégraphe qui était la seule chose qu'on pouvait mentionner au dix-neuvième siècle, on a maintenant toute une structure constitutionnelle, qui nous a été, littéralement, parachutée sur la tête par décision des juges.

Ce qui veut dire que l'enchâssement peut conduire à une sorte de gouvernement des juges extraordinairement étendu. Et c'est peut-être pas l'instrument le plus démocratique d'arbitrage entre les gouvernements élus, ni surtout d'évolution qui soit vraiment démocratiquement consentie.

Par exemple on parle de la mobilité -- je suis obligé de couvrir le plus rapidement possible certaines catégories -- parce que tout le monde a touché à tout et avec le temps qui passe, on n'y reviendra pas souvent cette semaine en tout cas.

Par exemple on parle beaucoup de la mobilité des citoyens, comme d'un droit, et c'est vrai que personne peut s'objecter au principe, mais si on en fait un absolu, si on rigidifie le droit à la mobilité, moi, je pense comme québécois, par exemple, que, évidemment ça pourrait littéralement envoyer promener, sortir par la fenêtre tout ce qu'on a mis comme réglementations, qui sont pas des réglementations discriminatoires, qui sont des réglementations pour protéger nos citoyens, tout ce qu'on a mis comme réglementation dans la pratique professionnelle par exemple, dans l'accès



à la pratique professionnelle pour les gens qui arrivent chez nous et qui doivent quand même avoir un certain respect, et c'est même important parfois pour la sécurité même de la santé, un certain respect de la majorité des citoyens et de leur compréhension.

On voit également dans certains aspects de ce projet de charte que pourraient être mis en danger des lois comme la loi du financement des partis politiques, que nous avons passée au Québec et qui, à notre avis, est une protection extrêmement importante -- j'ai pas à faire la leçon à personne -- mais, nous, nous sommes fiers d'avoir réussi à éliminer cette entrave à la démocratie et jusqu'à un certain point si on regarde jusqu'au fond ce danger pour la liberté de choix démocratiques que constituaient les caisses électorales là, non contrôlées, ce qu'on appelle en anglais les "slush funds".

Et quand je connais l'expérience américaine avec le "bill of rights" et la façon dont la Cour suprême américaine a interprété la liberté d'expression de façon à pouvoir -- sans qu'il y ait de mauvaise volonté, j'ai pas à juger les juges de la Cour suprême américaine -- mais de façon à éliminer la possibilité de loi du même genre aux Etats-Unis, je me dis, on n'est peut-être pas si pressés que ça de faire des enchâssements prématurés.

On a une loi au Québec qui s'appelle



la loi des petites créances, mais par rapport à ce qu'on appelle les pratiques généralement reconnues en matière d'administration de la justice, j'ai l'impression que la loi des petites créances que les citoyens non seulement acceptent, mais dont ils ne voudraient plus jamais se priver au Québec, et tous les québécois qui m'entendent le savent, pourrait être mise en danger par cet enchâssement constitutionnel.

Maintenant, sur le plan extrêmement fondamental, tout le vaste domaine des droits et des libertés des citoyens, ce qui a été dit par ceux dont je partage l'avis parmi mes collègues, me permet de passer assez rapidement mais d'insister quand même sur un ou deux aspects que moi je vais traiter plus en profane -- je suis pas un juriste pratiquant -- mais, qui quand même, font partie de la réflexion que nous avons faite et qui s'ajoute aux arguments que vous avez entendus déjà.

Sur le plan de ces droits et de ces libertés fondamentales, la constitutionalisation là, aurait quant à nous, comme résultat inévitable là aussi de compliquer l'évolution, de la rendre plus malaisée et d'enlever aux assemblées élues le pouvoir de l'aménager démocratiquement.

Je sais bien qu'il y a dans le monde -- monsieur Hatfield nous a quasiment donné des frissons tout à l'heure -- il y a dans le monde des tentations totalitaires, il y a même un ouvrage remarquable qui



a été écrit par un politicologue comme on dit remarquable lui aussi, sur la tentation totalitaire. Je crois pas qu'elle soit présente, à ce point-là, au Canada.

Mais, de toute façon, je rappellerai ce qu'a dit monsieur Blakeney tout à l'heure, si une population cède à un moment donné, à des tentations totalitaires, les tribunaux sont essentiellement des fétus de paille et si une population résiste aux tentations totalitaires et va plutôt dans le sens progressiste, alors il est pas nécessaire de tout figer devant les tribunaux.

Mais cela étant dit, je voudrais souligner qu'après tout, c'est des gens comme ça qui devraient être parmi les experts qu'on consulte, je voudrais souligner ce que disait un des plus éminent de tous les membres du monde judiciaire canadien qui, jusqu'à récemment -- que j'ai bien connu au Québec -- je crois pouvoir dire comme d'autres qui l'ont connu, que c'est une des plus grandes consciences juridiques qu'on ait formée au Canada, l'ancien juge de la Cour suprême Louis-Philippe Pigeon qui prenait sa retraite récemment. Et monsieur Pigeon a tenu à dire publiquement, à partir de son expérience de Juge de la Cour suprême, des choses comme ceci:

"Si on considère l'effet à prévoir d'une charte des droits intangibles -- "entrenched" -- il faut bien se rendre compte que cela comporte l'attribution aux tribunaux d'une partie



importante du pouvoir législatif, à mon avis, on aurait tort de croire qu'il s'agit d'une fonction comparable facilement à celle que comporte par exemple l'interprétation d'une constitution fédérale, c'est beaucoup plus complexe et plus exigeant."

Or, notre système, il est quand même fondé sur la représentation parlementaire. Et en transférant la responsabilité des parlements vers les tribunaux, on prive alors les citoyens de leur moyen le plus efficace d'agir sur l'évolution de leurs propres droits individuels et d'avoir une chance que l'évolution s'accélère comme c'est nécessaire.

Et là-dessus, je vous donne un exemple québécois. Le deux (2) septembre -- il y a quelques jours -- le Conseil du Statut de la Femme qu Québec, les organismes équivalents existent au niveau fédéral, existent dans d'autres provinces, le Conseil du Statut de la Femme, qui a des raisons représentant l'évolution -- on sait à quel point c'est fluide , c'est pas fixé -- à quel point ça heurte des mentalités établies cette évolution de ce qui est après tout, la moitié des personnes, un petit peu plus que la moitié des personnes qui constituent la société, le Conseil du Statut de la Femme au Québec, qui a fait une



extraordinaire besoin de réflexions, de recommandations depuis quelques années, nous a fait parvenir, donc, il y a une semaine, ou à peine, un mémoire qui couvre l'ensemble de ces sujets et qui s'adresse directement à ce qui peut rester encore de certaines attitudes parmi les hommes autour de la table qui sont une exception heureusement, comporte, constitue toute la décision qui se prend ici, avec ce qu'on peut avoir de déformations que la vie nous a inspirées selon l'âge et selon ce qui nous est arrivé.

Alors, voici ce qu'il nous disait:

"Ce qui est important -- il parlait au nom d'une réflexion sur la condition des femmes dans la société -- ce qui est important, c'est que chaque collectivité s'adapte à l'évolution de la condition féminine et respecte la dynamique propre du nouveau partage de pouvoirs entre les hommes et les femmes, or, dans le domaine des droits et du statut des femmes, c'est le gouvernement qui est le plus près des citoyens, qui est le plus susceptible de s'ajuster -- et dans un sens aussi parfois de donner l'exemple -- de s'ajuster et de développer une politique de la condition féminine qui correspond à la situation de la collectivité. Le développement d'une telle politique suppose



cependant que le gouvernement en question possède les instruments lui permettant d'imprimer les orientations qu'il souhaite et de légiférer sans carcan externe, ni chevauchement de juridiction avec d'autres autorités."

Et elles donnent un peu plus loin dans leurs recommandations une opinion un peu cruelle sur la Cour suprême justement, ce qui nous semble assez d'actualité.

Elles disent ceci:

"La définition des droits mêmes des femmes pose certains problèmes parce que cette situation des femmes est actuellement en pleine mutation -- s'il y a quelqu'un qui sait pas ça, il n'a pas les yeux ouverts ni l'esprit ouvert à ce qui se passe dans la société -- la situation des femmes est en pleine mutation et à ces changements correspondent des droits nouveaux. -- Et bien elles disent: -- Les canadiennes savent assez -- et je pense que ce n'est pas seulement au Québec, ça c'est de l'expérience vécue -- que la Cour suprême du Canada n'a pas tendance à être particulièrement libérale à leur égard et que l'inter-



prétation d'une série de droits par cette Cour ne serait probablement pas de nature à leur garantir des droits rapidement. Il en est de même pour l'interprétation restrictive que font les tribunaux de l'article 1-B de la déclaration des droits du Canada."

Et elles concluent en disant:

"L'ensemble de ces considérations nous porte à croire que l'enchâssement des droits dans la constitution n'est peut-être pas le moyen -- et ça c'est très poli, c'est très courtois -- n'est peut-être pas le moyen le plus efficace pour garantir aux femmes les droits qui leur sont indispensables.

Et là, je dois ajouter que, je reviens à l'expérience vécue de monsieur Pigeon, l'ex-juge de la Cour suprême, telle qu'il l'a fait connaître en public, et qui faisait appel aussi par une citation à un témoignage du Juge Bora Laskin, juge en chef de la Cour suprême et dont l'essentiel était de dire ceci:

"Au fur et à mesure -- non seulement sur une charte des droits la plus courte possible mais au fur et à mesure qu'on élargirait à force de catégories -- et c'est un peu ce genre de salade à laquelle ressemble



le projet que nous avons devant nous catégorie-ci, catégorie-ça, catégorie-etc., -- au fur et à mesure qu'on élargit cet éventail, le témoignage même de l'expérience vécue des juges qui ont eu à fonctionner à ce niveau suprême, auquel on prétendrait confier tout cet ensemble, c'est que la Cour n'a pas l'expérience et serait très mal préparée et débordée par-dessus tout le reste vis-à-vis une avalanche comme celles-là de nouvelles responsabilités."

Maintenant, si vous permettez, je n'irai pas plus loin, parce que si on doit entrer dans toutes les catégories, ce qui serait la façon, je crois, responsable d'arriver à les examiner toutes, il faudrait probablement plus que les cinq (5) jours que réclamait monsieur Hatfield hier sur un autre sujet, de toute façon sur le fond, ce que je viens de dire signifie que, quant à nous du Québec, on est maintenant dans une position trois-trois (3/3) je fais pas de sondage, j'ai écouté ceux qui nous ont précédés, je vais briser l'égalité en disant que ces quatre-trois (4/3) contre l'enchâssement qui nous paraîtrait prématuré des droits fondamentaux.

Pour le moment je me contente de ça, mais vous permettrez que sans abuser du temps



de la conférence, je prenne quelques brèves minutes pour toucher à l'aspect de ce projet fédéral qui concernerait directement et qui affecterait directement les politiques linguistiques et les politiques d'éducation du Québec.

Je ne veux pas vous répéter mot à mot tout ce que j'ai dit dans les remarques que j'ai faites à l'ouverture de la conférence lundi.

Je répète simplement ceci. Nous sommes, nous, le peuple, la société, la nation francophone au Québec, on se chicanera pas sur les textes, on aura peut-être l'occasion de le faire si revient sur le projet de préambule. On ne se chicanera pas sur les termes. Mais nous sommes, nous, ceux de la société distincte au Canada, nous sommes seuls de notre espèce, pas seulement au Canada, sauf des minorités de plus en plus fragiles, comme vous le savez, nous sommes seuls de notre espèce sur un continent dont tout le reste était et est destiné à jamais à parler une autre langue et à vivre une autre culture, et c'est pour ça que le Québec a exigé, dès le début du régime fédéral, d'avoir à lui, exclusivement un Parlement démocratique dont les pouvoirs seraient souverains, intangibles dans les domaines qui paraissaient -- à l'époque déjà -- essentiels au maintien et à l'épanouissement de son existence nationale, de son identité, inutile de vous dire que ces pouvoirs -- quant à nous -- sont encore essentiels, et en particulier en ce qui concerne



la politique linguistique et l'éducation.

Donc, quant à nous, il ne saurait être question d'en priver d'aucune façon notre Assemblée nationale, ni de les soumettre -- si peu que ce soit -- à des décisions extérieures.

Maintenant, on prétendrait dans le projet fédéral soumettre ces pouvoirs de l'Assemblée nationale du Québec à une évolution forcée en partant d'un principe basé sur la liberté de mouvements, et ça sonne bien, et basé sur la liberté d'accès aux écoles pour les anglophones du Canada venant au Québec.

Monsieur Davis de l'Ontario a parlé noblement tout à l'heure de ce principe, il a parlé également des progrès accomplis en Ontario. On reconnaît qu'il y a eu des progrès. Monsieur Davis reconnaîtra qu'ils ont été laborieux et qu'ils le sont encore et c'est normal.

Monsieur Hatfield a parlé du Nouveau-Brunswick, c'est vrai que le Nouveau-Brunswick est probablement dans le sens de la reconnaissance des droits de la minorité francophone la plus avancée de toutes les provinces au Canada sauf le Québec. Et il l'a dit et je lui en rends hommage de nouveau, sauf le Québec en ce qui concerne la minorité anglophone au Québec. Et là-dessus -- sans abuser de votre patience -- je termine en vous disant, si vous permettez, ceci: on a largement dénoncé à l'extérieur du Québec, unilatéralement, c'est le moins



qu'on puisse dire, le sort supposément pénible que la Loi 101, qui a succédé, comme vous le savez, à la Loi 22 de nos prédécesseurs libéraux, le sort supposément pénible que la Loi 101 réservait selon certains, à la minorité anglophone du Québec, vous avez même certains petits noyaux très extrêmes qui sont venus nous envoyer en pleine face, ici, hier, un télégramme et des manifestations qui disaient qu'ils étaient persécutés au Québec; c'est un grand mot "persécuté", c'est le genre d'insulte que les québécois n'accepteraient pas pour les raisons que je vais résumer.

Cette perception -- nous le savons -- elle a été largement causée par le fait que la loi prévoit, que les enfants qui viennent d'autres provinces canadiennes doivent aller à l'école française au Québec, de la même façon d'ailleurs que les francophones du Québec doivent -- par la force des choses -- aller le plus souvent à l'école anglaise lorsqu'ils se déplacent dans les autres provinces. Encore faut-il rappeler que nous avons proposé d'adoucir au profit des anglophones du reste du Canada, cette disposition de notre loi pourvu qu'il y ait une contrepartie dans les provinces anglaises au profit des francophones.

C'est ce que nous avons appelé la clause de réciprocité que nous avons proposée pour la première fois, monsieur Hatfield rappelait notre réunion à St.Andrews au Nouveau-Brunswick, il



y a déjà trois (3) ans, sauf erreur.

Je me souviens que le commissaire aux langues monsieur Max Yalden -- je le rencontrais ce matin avant d'entrer dans cette chambre -- monsieur Yalden que je rencontrais avait dit, je voulais vérifier avec lui mon souvenir, avait dit assez rapidement, après avoir été nommé commissaire aux langues, pour succéder à monsieur Keith Spicer, que cette "working hypothesis", si vous voulez cette hypothèse de travail de la réciprocité soit bi-latérale, soit multilatérale, qui permettrait non pas de demander aux autres provinces du Canada de trouver une situation équivalente pour notre minorité francophone chez eux à la situation qui existe au Québec pour la minorité anglophone, mais simplement qu'on puisse s'entendre sur des progrès et faire le point régulièrement, monsieur Yalden avait dit que ça lui paraissait un "workable basis", que c'était quelque chose qu'on aurait peut-être dû considérer sérieusement. Enfin, ça n'a pas été fait jusqu'ici.

Mais, il reste quand même que ça demeure toujours une clause ouverte dans la Loi 101, mais quoiqu'il en soit, tout ce débat a amené un grand nombre de citoyens, d'hommes politiques, de chefs d'entreprises, de commentateurs, d'experts, d'analystes, après avoir regardé la réalité au Québec, à reconnaître que tout compte fait, la situation de la minorité anglophone au Québec était de loin autrement avantageuse aujourd'hui que celle réservée



jusqu'ici et encore aujourd'hui à nos concitoyens francophones du Canada anglais. Beaucoup ont découvert que cette situation privilégiée, encore aujourd'hui hautement privilégiée, de la minorité anglophone du Québec faisait l'objet de garanties dans cette Loi 101 qu'on dénonçait.

Et je vous pose la question et je vous la pose franchement: trouvez-moi un endroit ailleurs au Canada, même au Nouveau-Brunswick, où existerait comme au Québec, un système complet d'écoles de la maternelle à l'université pour la minorité, un endroit où existerait une garantie de services d'enseignement en anglais à tout enfant de la minorité sans qu'il y ait de clauses "where numbers warrant", là où le nombre le justifie.

Incidemment, la loi québécoise prévoit qu'une commission scolaire qui n'a pas "the required number", de nombre suffisant d'enfants pour organiser l'enseignement en anglais, doit conclure des arrangements pour que ces enfants bénéficient d'un tel enseignement dans une autre commission scolaire et c'est défrayé dans tous les cas par les fonds publics.

Y a-t-il un autre endroit où de façon globale ailleurs au Canada des commissions scolaires sont de fait et de droit des organismes sous contrôle de la minorité? Y a-t-il un autre endroit où le financement public de l'enseignement pour la minorité se fait exactement selon les mêmes



normes et au même niveau que le financement du réseau francophone de la majorité. Tout ça a été possible sans que la constitution ne contiennent de chartes des droits comme on voudrait maintenant l'imposer. A cet égard il est peut-être bon de rappeler les observations de la Commission Pépin-Robarts, qui s'est penchée longtemps sur le problème et je cite:

"Nous nous attendons à ce que les droits de la minorité anglophone continuent à être respectés -- ça, c'était en mil neuf cent soixante-dix-neuf (1979), deux (2) ou trois (3) ans après l'entrée en vigueur de la Loi 101 -- nous nous attendons à ce que les droits de la minorité anglophone continuent à être respectés dans le domaine de l'éducation et des services sociaux, ces droits, il importe de le souligner, ne sont pas garantis par la constitution canadienne, et pourtant, ils sont reconnus déjà dans la Loi 101, la Charte de la Langue française qui émane d'un gouvernement du Parti québécois. Ainsi avons-nous la preuve -- disait Pépin-Robarts -- au Québec que les droits de la communauté anglophone peuvent être protégés



sans pour autant qu'il y ait  
contrainte constitutionnelle et  
que les gouvernements de cette  
province sont tout à fait capables  
de réconcilier l'intérêt de la  
majorité et les préoccupations de la  
minorité."

Et là-dessus, si vous permettez, je vais terminer  
par une deuxième citation qui, je crois, pourrait --  
et ça vient encore une fois de ses commissaires  
nommés par le gouvernement fédéral pour étudier la  
situation constitutionnelle et entre autres les  
droits linguistiques en cours de route, et qui peut  
intéresser les autres provinces aussi dans le sens  
de l'évolution parlementaire plutôt que de la coerci-  
tion constitutionnelle. Pépin-Robarts disait ceci:

"La réalité des choses nous  
porte à penser que les minorités  
francophones -- en dehors du  
Québec -- pourront obtenir davantage  
par le biais de législations provin-  
ciales qu'elle n'obtiendraient à  
l'heure actuelle par le biais de  
garanties constitutionnelles rigides.  
C'est ce consensus que nos recomman-  
dations visent à mettre en relief,  
disait Pépin et Robarts. Aussi nos  
recommandations s'adressent-elles à



toutes les provinces, celle qui est française le Québec, celles qui sont anglophones, celle qui est bilingue plus que d'autres, le Nouveau-Brunswick, plutôt que de brandir la menace de la constitution nous faisons appel à l'intelligence et au sens de l'équité de la population partout, mais par la voie de l'évolution législative.

Et je crois que c'est au fond ce sur quoi nous pouvons nous entendre et quant à nous, nous disons simplement en terminant: nous n'avons pas de leçon à recevoir de personne actuellement au Québec en ce qui concerne le traitement de la minorité, et c'est pas déguisé derrière un principe qui est très difficile à appliquer de toute façon et vous le savez, un principe constitutionnel rigide que nous accepterons au Québec, ce qui pourrait signifier le retour à ce qu'on a appelé: le libre choix absolu qu'évoquait avec une drôle de nostalgie le ministre de la justice fédérale tout à l'heure, parce qu'on devrait savoir ou pas avoir oublié les affrontements et les déchirements de la société auxquels ça nous a menés dans les années soixante.

En tout cas, nous, sous le couvert de la pseudo-générosité qu'on nous propose dans les contexte actuel et dans un contexte prévisible, il nous semble qu'il nous serait absolument contraire aux intérêts du Québec et à la protection de ses droits les plus fondamentaux d'accepter sur ce plan-là le projet fédéral.



Government  
Publications

NOTES FOR THE USE OF

THE HONOURABLE WILLIAM G. DAVIS

PREMIER OF ONTARIO

AT THE CONFERENCE OF FIRST MINISTERS

ON THE CONSTITUTION

Ottawa, September 8 - 12, 1980

POWERS OVER THE ECONOMY



- . Ontario believes this item is of fundamental importance to Canada. On many occasions in recent years, Ontario has stressed the need to strengthen the economic ties within Confederation, and the need to ensure a freer movement of goods, services, capital and people among provinces. While today's agenda item is formally called "Powers Over the Economy", I believe that what we are really talking about is the fundamental principle that people, goods and services should be able to cross provincial boundaries without hindrance -- in other words, the principle of the economic union.
- . Ontario believes the principles of economic union must be entrenched in the constitution and that these principles must be safeguarded. I understand this position is generally shared by all governments. I find this is encouraging.
- . A number of measures could be considered, but expanding section 121, the section on economic union, to ensure free movement of people, goods, services and capital regardless of place of residence, to prohibit non-tariff barriers that inhibit movement, appears to be the most logical and important area for us to concentrate on.
- . Ontario believes there must be a way of enforcing these principles. It should be as simple and direct as possible, and, provide a right of redress for individual



citizens as well as governments. We believe there should be a role for the courts, but we believe a forum representing our governments should also be considered. But we do not believe such a forum is enough by itself to protect the economic union and the rights of citizens to have recourse to the courts when they believe their rights are being infringed.

- . Ontario was pleased to agree at the Premiers' Conference that the Finance and Economic Development Ministers meet soon to discuss programs to enhance our Canadian economic union and reduce barriers to trade within Canada. Ontario has recently taken the initiative in areas such as urban transit and hospital supplies to aid Canadian industry in all regions through cooperative public purchasing strategies. These kinds of initiatives, I would submit, are useful and encouraging, but insufficient by themselves in moving to our objective of eliminating barriers to the free flow of goods, services, capital and people among the provinces. We believe it is fundamental for the constitution to make provision for the future preservation and enhancement of the economic union.

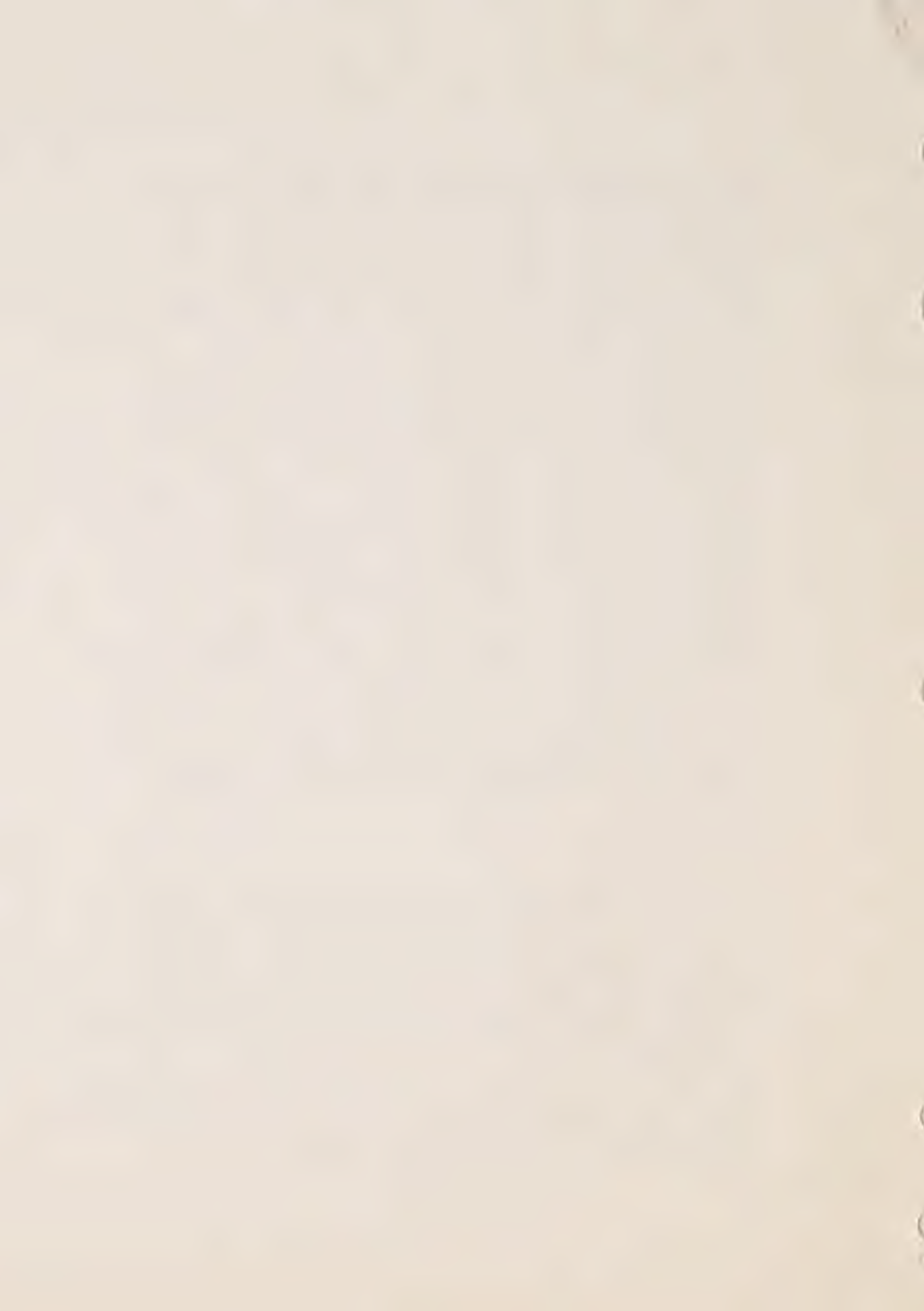


- . It is no secret that all of us have acted contrary to the requirements of the common market from which we should benefit. Virtually every government has taken actions - and the trend has increased in recent years - that have the combined effect of weakening and balkanizing the Canadian economic system. Example:
  - setting non-tariff barriers such as preferential purchasing policies, that discriminate against goods manufactured in other provinces
  - actions that restrict the employment within a province of Canadians who are residents of other provinces
  - actions that restrict the movement of capital from one province to another.
- . These illustrate our concern: actions like these have a harmful impact on the overall economic well-being of the country, and of each individual Canadian. When a barrier is created, whatever its short term and local effects, it ultimately means less economic benefit for all of us.
- . Commitment to economic union need not limit provincial economic development initiatives as long as they



do not discriminate against other Canadians from other provinces. Clearly we must recognize the validity of some governmental actions that have an incidental impact on the basic principle we are discussing. The Premier of Saskatchewan and others have eloquently expressed the concern that an absolute prohibition of barriers might rule out affirmative action programs taken for highly desirable purposes. That is why we have proposed that the test should be the basic intent and substance of the law or practice, rather than its incidental impact. I believe that with this kind of test we should be able to avoid writing into the constitution a series of escape clauses which would tend to put in doubt our commitment to the basic principle of the economic union.

If we can agree also on an intergovernmental forum to supplement court review of actions that might tend to infringe the economic union, such a body (which should include representatives of both the federal and provincial governments) should as a first task agree on guidelines which would recognize some of the concerns of those who fear exclusive reliance on the courts.



. In sum, Ontario strongly believes we must find ways to come to grips with the issue of impediments to fostering our economic union. It is a vital matter for the future of Canada. I am greatly encouraged by the efforts made by Ministers and their officials. The drafts before us are an excellent basis on which to proceed.



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CONCLUDING STATEMENT  
BY THE  
HONOURABLE WILLIAM G. DAVIS  
PREMIER OF ONTARIO  
TO THE  
CONFERENCE OF FIRST MINISTERS ON THE CONSTITUTION

OTTAWA, SEPTEMBER 13, 1980





PRIME MINISTER, PREMIERS,

ALONG WITH CANADIANS ACROSS THIS COUNTRY, I LOOKED FORWARD TO THIS WEEK WITH CONSIDERABLE ANTICIPATION, A TOUCH OF OPTIMISM AND A DEGREE OF APPREHENSION. I UNDERSTATE MY FEELINGS TODAY WHEN I SAY THAT THE RESULTS, FOR ME AND MY FELLOW ONTARIANS, HAVE BEEN DISAPPOINTING.

THAT IS NOT TO SUGGEST THAT OUR EFFORTS HAVE BEEN WASTED. NOT BY ANY MEANS. THE DISCUSSIONS HAVE BEEN POINTED AND INTERESTING. THE RHETORIC HAS CLEARLY IMPRESSED MANY BECAUSE OF ITS HIGH LEVEL. AND CANADIANS NOW UNDERSTAND MUCH MORE CLEARLY, THE DIFFERENT ISSUES AND THE DIFFERENT POINTS OF VIEW.



IT IS NOT THE NATURE, THE TONE  
OR THE QUALITY OF OUR MEETINGS, THEREFORE, THAT  
DISAPPOINT. IT IS THE RESULT. FOR WHILE  
DURING, AND IMMEDIATELY AFTER, THE RECENT  
REFERENDUM MOST OF THE PROVINCES SEEMED TO  
STAND TOGETHER, WE NOW STAND DIVIDED ON A  
NUMBER OF KEY ISSUES. WE HAVE DEMONSTRATED,  
UNFORTUNATELY, THAT WE HOLD SOMEWHAT DIFFERENT  
VIEWS OF WHAT CANADA IS AND SHOULD BE. WE  
HAVE DEMONSTRATED, AT THE VERY LEAST, THAT  
MUCH MORE EFFORT, AND A MUCH GREATER SPIRIT  
OF RECONCILIATION IS NEEDED BEFORE WE ATTAIN  
SIGNIFICANT SUCCESS IN CONSTITUTIONAL REFORM.



ON MONDAY, IN MY OPENING REMARKS,  
I ATTEMPTED TO MAKE SOME SIMPLE POINTS:

- THAT NOW IS THE TIME TO ACT AND  
TAKE THE INITIAL, NECESSARY STEPS  
TOWARD A NEW CONSTITUTION
- THAT THE DECISIONS TAKEN SHOULD  
HAVE, AS OUR FIRST OBJECTIVE, THE  
INTERESTS OF ALL OF CANADA
- THAT TO ACHIEVE SUCH RESULTS OUR  
INDIVIDUAL INTERESTS WOULD HAVE TO  
BE TEMPERED BY OUR CONCERN FOR  
THE NATIONAL GOOD.

IN ADDITION, I TRIED TO INDICATE THOSE  
PARTICULAR ISSUES, INCLUDING PATRIATION, ECONOMIC  
UNION AND BASIC RIGHTS, THAT WERE OF IMPORTANCE  
TO THE CITIZENS OF ONTARIO.



I BELIEVE THAT, FROM THE OUTSET, THROUGHOUT THE LAST THREE MONTHS OF INTENSIVE DISCUSSION, AND DURING THIS PAST WEEK, THE RECORD WILL CLEARLY SHOW THAT THE MAIN EFFORT OF THE PROVINCE OF ONTARIO WAS TO ACHIEVE THE MAXIMUM CONSENSUS ON THE AGENDA BEFORE US.

YES, WE HAD STRONG POINTS OF VIEW ON SEVERAL SUBJECTS, AND WE EXPRESSED THESE CLEARLY. BUT THEY WERE BROUGHT TO THE TABLE, AND ARGUED IN AN ATTEMPT TO REACH CONSENSUS.

OUR APPROACH AT THIS MEETING WAS TO PUT NO CONDITIONS ON THE CANADIAN IMPERATIVE. OUR LOYALTY TO THE CANADIAN IDEAL TRANSCENDS THE RELEVANCE OF AN ANTI-OTTAWA MOVEMENT, WHATEVER ITS POPULARITY WITH THE VARIOUS PROVINCIAL GOVERNMENTS OF THE DAY.



IT WAS ANOTHER KIND OF MOVEMENT THAT BUILT THIS COUNTRY AND PRESERVED FOR ENGLISH AND FRENCH SPEAKING CANADIANS ALIKE A SECURE NATIONAL IDENTITY ON THE NORTHERN HALF OF OUR CONTINENT.

THAT MOVEMENT WAS ONE OF VISION AND CONCILIATION, DRIVE AND DETERMINATION. THE MACDONALDS, THE CARTIERS, THE TUPPERS, THE GALTS, THE BROWNS, THE SMALLWOODS - ALL PURSUED THE BETTERMENT OF THEIR REGIONS AND PROVINCES. BUT THEY DID AFTER LONG DEBATE AND WITH MUCH PAIN AND CIRCUMSPECTION, CHOOSE THE CANADIAN WAY.

WHO ARE WE, MY FRIENDS, AND WHAT RIGHT HAVE ANY OF US TO BETRAY THAT CHOICE, NOW, HERE, TODAY.



LET ME BRIEFLY RESTATE SOME OF THE POSITIONS WE HAVE TAKEN IN AN ATTEMPT TO ASSIST A PROVINCIAL CONSENSUS.

ON COMMUNICATIONS, ONTARIO, ALONG WITH SASKATCHEWAN, TOOK THE LEAD IN WORKING OUT A PROVINCIAL CONSENSUS THAT WOULD HAVE RETAINED ESSENTIAL NATIONWIDE RESPONSIBILITIES FOR THE FEDERAL GOVERNMENT, WHILE ALLOWING PROVINCES, IF THEY SO DESIRED, TO PLAY A GREATER ROLE IN THE REGULATION OF TELECOMMUNICATIONS, CABLE AND IN LOCAL BROADCASTING. WE WERE DISAPPOINTED THAT THE FEDERAL GOVERNMENT DID NOT SHOW MORE FLEXIBILITY IN MOVING TOWARDS THIS SENSIBLE PROVINCIAL POSITION.

ON AN AMENDING FORMULA, WHILE ONTARIO EXPRESSED ITS PREFERENCE FOR THE VICTORIA AGREEMENT ARRIVED AT IN 1971, WE WERE PREPARED TO AGREE TO THE VANCOUVER CONSENSUS WORKED OUT DURING THE SUMMER, AND TO WHICH ALL PROVINCES SUBSCRIBED.



ON FAMILY LAW, ONTARIO TOOK THE LEAD IN MAKING PROPOSALS THAT FOUND THE SUPPORT OF THE FEDERAL GOVERNMENT AND AT LEAST EIGHT OF THE PROVINCES. WE SHOWED OUR WILLINGNESS TO ACCOMMODATE THE CONCERNS OF OTHER GOVERNMENTS IN DEVELOPING MORE UNIFIED ARRANGEMENTS WITHIN THE PROVINCES WHILE AVOIDING THE CREATION OF DIVORCE HAVENS.

ON THE SUPREME COURT, ONTARIO JOINED WITH ALL GOVERNMENTS IN A CONSENSUS ON ALMOST ALL ASPECTS OF ENTRENCHING, IN THE CONSTITUTION, THE COURT'S ROLE AND STRUCTURE.

ON A CONSTITUTIONAL ENTRENCHMENT OF THE PRINCIPLE OF EQUALIZATION, ONTARIO WAS PART OF A CONSENSUS WITH THE FEDERAL GOVERNMENT AND AT LEAST EIGHT PROVINCES.

ON A NEW SECOND CHAMBER, ONTARIO PARTICIPATED IN DEVELOPING A JOINT PROPOSAL TO PROVIDE FOR A PROVINCIAL VOICE IN OTTAWA. THROUGH THIS APPROACH, WE SOUGHT TO OVERCOME SOME OF THE ALIENATION FROM OUR NATIONAL GOVERNMENT FELT IN PARTS OF OUR COUNTRY.



THERE WERE, AS WELL, POSITIONS WHERE THE FEDERAL GOVERNMENT AND ONTARIO STOOD TOGETHER.

I CAN SAY WITHOUT EQUIVOCATION OR EMBARRASSMENT THAT THE PEOPLE OF ONTARIO BENEFIT IMMENSELY FROM THE UNITY OF CANADA. THAT BEING OUR HIGHEST PRIORITY, THERE ARE COMPELLING REASONS UNDERLYING OUR SUPPORT FOR THE GOVERNMENT OF CANADA ON SEVERAL FUNDAMENTAL CONSTITUTIONAL ISSUES.

FIRST, IT IS MY VIEW THAT OUR ECONOMIC UNION, OR THE RIGHT OF PEOPLE, GOODS AND SERVICES TO MOVE FREELY FROM PROVINCE TO PROVINCE, MUST BE STRENGTHENED IN BOTH LEGAL AND POLITICAL TERMS. WORKING TOGETHER IN ONE CANADA MUST BE SOMETHING MORE THAN A PIOUS HOPE. NO OTHER ACTIVITY OF OUR GOVERNMENTS IS MORE IMPORTANT.

CONSEQUENTLY, WE BELIEVE THAT THIS PRINCIPLE OF A SINGLE CANADIAN ECONOMY SHOULD HAVE MEANINGFUL FORCE IN LAW. OUR GOVERNMENTS MUST BE DISCIPLINED BY IMPERATIVES OF ECONOMIC NEED AND INDIVIDUAL RIGHTS OUTSIDE OUR PROVINCIAL BOUNDARIES.



OF COURSE, EACH OF US CAN AND MUST DEFEND IN OUR OWN JURISDICTIONS THOSE UNIQUE PROGRAMS WE INITIATE ON BEHALF OF OUR OWN PEOPLE. HOWEVER, IT IS A DANGEROUS AND SELF-DESTRUCTIVE MYTH THAT OUR TEN PROVINCIAL GOVERNMENTS, IN OUR TEN SEPARATE PROVINCES, CAN BUILD, BY OURSELVES, ANYTHING TO MATCH THE POTENTIAL OF A STRONG CANADA-WIDE ECONOMY.

THE CHALLENGE BEFORE US AS RESPONSIBLE POLITICIANS IS NOT SIMPLY TO EXCHANGE POINTS OF LAW AND JUDICIAL THEORY. THE CHARTER OF BASIC RIGHTS, WHICH WE WERE HERE TO CONSIDER, REPRESENTED A PRACTICAL AND CREATIVE BALANCE. IT RETAINED OUR STURDY TRADITIONS OF PARLIAMENTARY DEMOCRACY AND THE RULE OF LAW. AND BOTH ARE INDISPENSABLE FOR THE PROTECTION OF OUR CITIZENS AND THE RESTORATION OF OUR NATIONAL UNITY.

OUR DISCUSSION ON ENTRENCHING EDUCATIONAL RIGHTS REALLY SHOULD HAVE BEEN AN OPPORTUNITY TO STRIKE A SOLID AND TRUSTWORTHY CONTRACT BETWEEN OUR TWO GREAT LANGUAGE COMMUNITIES.



THAT WE FAILED TO AGREE ON A CHARTER IS A RESULT THAT THOSE WHO OPPOSED THIS IDEA MAY REGARD AS A VICTORY FOR OUR GREAT TRADITIONS. I RESPECT THEIR VIEW BUT I AM PROFOUNDLY DISAPPOINTED AT ITS DOCTRINAIRE IMPLICATIONS. COMPROMISE ON THIS ISSUE WOULD HAVE SERVED OUR PEOPLE WELL. IT WOULD HAVE BEEN THE CANADIAN WAY.

ASIDE FROM OUR ADVOCACY POSITION ON A CHARTER, ON THE FREE FLOW OF GOODS, SERVICES, PEOPLE AND CAPITAL, AND ON PATRIATION, WE TOOK A FIRM POSITION IN OPPOSITION TO THE RIGHT TO SELF DETERMINATION.

ONTARIO IS AND REMAINS TOTALLY OPPOSED TO THAT KIND OF SELF DEFEATING, PROVOCATIVE AND UNACCEPTABLE ARRANGEMENT. IT ADDS NOTHING TO ENHANCE THE CLIMATE AMONG CANADIANS AND DOES MUCH TO ADD TO THE ONGOING THREAT OF CONTINUED DISCORD AND DISAGREEMENT.



WE DO NOT BELIEVE, IN ONTARIO, THAT ONE BUILDS A NATIONAL SUPERSTRUCTURE WITH AN ARRAY OF ESCAPE HATCHES; WHATEVER THE ULTIMATE POLITICAL GOAL OF THE PRESENT GOVERNMENT OF QUEBEC, WE DON'T INTEND TO BE PART OF ANY EFFORT TO MAKE THAT GOAL ANY EASIER.

WE OFFERED, INSTEAD, A PREAMBLE WHICH SOUGHT TO BUILD A NATIONAL STATEMENT OF PURPOSE; A NATIONAL CALL TO CONTINUED ACHIEVEMENT AND COOPERATION TOGETHER.

AS I MENTIONED EARLIER, THIS CONFERENCE CLEARLY BEGAN WITH A REVIEW BY MANY AROUND THE TABLE OF THEIR RESPECTIVE VISIONS OF CANADA.

IN ONTARIO'S VIEW, THIS COUNTRY IS TOLERANT AND MAGNANIMOUS ENOUGH TO EMBRACE MORE THAN ONE VISION AND MORE THAN ONE VIEW.

YET, IF OUR RESPECTIVE VISIONS HAVE NO SCOPE FOR THE VIEWS OF OTHERS, AND NO COMMON THREAD, THEN, WE MAY NOT, IN THE END, HAVE A NATION AT ALL.



WE SEE CANADA AS MORE THAN THE PRODUCT OF ELEVEN GOVERNMENTS AND BUREAUCRACIES; FRANKLY WE SEE A CANADA STRONGER IN MANY WAYS THAN ALL HER FEDERAL AND PROVINCIAL POLITICIANS COMBINED. WE SEE A CANADA THAT BESTOWS AS A BIRTHRIGHT ACCESS TO A VERY SPECIAL KIND OF IDENTITY AND OPPORTUNITY.

THE CANADA WE SEEK TO HELP BUILD CAN SURVIVE EVEN CONFERENCES LIKE THESE; IT CAN SURVIVE BECAUSE THE INHERENT STRENGTH OF OUR PEOPLE AND THEIR RESOLVE TRANSCEND WHATEVER SETBACKS HER NEGOTIATORS SUSTAIN.

ABOVE ALL, WE SEE A NATION THAT HAS SOME PROBLEMS TO SOLVE, PROBLEMS OF WEALTH AND STRUCTURE -- THE KINDS OF PROBLEMS FOR WHICH MILLIONS THROUGHOUT THE WORLD WISH THEY COULD TRADE THEIR PROBLEMS OF POVERTY, STARVATION AND OPPRESSION.



OUR VISION OF CANADA IS ONE WHERE OUR FREEDOM TO DISAGREE AS GOVERNMENTS IS TEMPERED BY A SENSE OF PUBLICALLY INSPIRED ORDER AND PRIORITY. IT IS ONE WHICH SAYS THAT THE PEOPLE OF CANADA HAVE ONE NATIONAL GOVERNMENT WITH THE RIGHT TO TAKE INITIATIVES ON BEHALF OF THE NATION WITHOUT ALWAYS ENCOUNTERING SUSPICION AND MISTRUST FROM THE GOVERNMENTS OF THE PROVINCES.

WE HAVE NEVER SEEN ANY DIFFERENCES, AT THIS TABLE WHETHER IT BE LAST MONDAY, EIGHTEEN MONTHS AGO, OR AT VICTORIA IN 1971, THAT WERE NOT AND ARE NOT RECONCILABLE.

ONTARIO CAME TO THIS CONFERENCE TO SUSTAIN OUR VISION OF CANADA -- THAT IS MY GOVERNMENT'S SWORN DUTY. BUT THAT VISION IS A TOLERANT ONE -- ONE THAT EMBRACES THE NEED TO SHARE TOGETHER AS A PEOPLE AND AS A NATION.



WE HAVE LEARNED AT THIS CONFERENCE, THAT ANIMOSITIES, FOR SOME, CAN RUN DEEP; WE HAVE ALSO LEARNED THAT DESPITE THE ELOQUENCE WITH WHICH THEY ARE STATED, THOSE ANIMOSITIES ONLY OVERTAKE OUR COMMON INTEREST WHEN WE ALLOW THEM TO DO SO. WHAT UNITES US, WHAT UNITES THE PEOPLE OF CANADA, DESPITE THEIR GOVERNMENTS, IS STILL STRONGER.

OUR VISION FOR CANADA IS FOR THAT ULTIMATE STRENGTH TO PREVAIL.

BUT, WHATEVER VISION WE MAY HOLD, THE BASIC QUESTION WE ALL FACE IS WHERE WE GO FROM HERE. FOR MY PART, WHILE I REGARD THIS WEEK'S EFFORTS AS DISAPPOINTING, IT CANNOT DETER US IN OUR OVERALL OBJECTIVE -- A NEW AND ACCEPTABLE CONSTITUTION FOR CANADA. WE MUST CARRY ON WITH THE TASK WITHOUT UNDUE INTERRUPTION.



BUT TO DEMONSTRATE THAT THIS WEEK WAS NOT AN INSURMOUNTABLE SETBACK; TO DEMONSTRATE THAT WE RETAIN OUR DETERMINATION TO SEE THIS TASK THROUGH, WE MUST NOT ALLOW THIS SESSION TO CONCLUDE WITHOUT CONCRETE EVIDENCE THAT SOME PROGRESS HAS BEEN MADE.

AS A RESULT, I RETURN, BUT WITH GREATER EMPHASIS THAN EVER, TO THE PROPOSAL I PUT BEFORE THIS GATHERING IN FEBRUARY 1979. LET US TRY TO REACH AGREEMENT ON AT LEAST ONE FUNDAMENTAL POINT. LET US PATRIATE OUR CONSTITUTION NOW. LET US BRING OUR CONSTITUTION TO CANADA. LET US MAKE IT CLEAR TO THE WORLD, AS WELL AS TO OURSELVES, THROUGH THIS SIMPLE ACT, THAT WE HAVE COME OF AGE.

I HAVE HEARD ALL THE ARGUMENTS AGAINST SUCH A STEP AT THIS TIME. IN MY OPINION, NONE IS SO IMPORTANT THAT IT WILL OFFSET THE VALUE THAT WILL ACCRUE.



I UNDERSTAND THAT PATRIATION WITH AN AMENDING FORMULA IS PREFERRED. I WOULD PROPOSE, THEREFORE, THAT WE ACCEPT UNANIMITY AS AN INTERIM PROVISION UNTIL WE HAVE COMPLETED OUR TASK OF AGREEING ON AN ACCEPTABLE PERMANENT FORMULA. BUT WITH OR WITHOUT AN AMENDING FORMULA, THE TIME HAS COME TO ACT.

I INVITE MY FELLOW PREMIERS TO JOIN IN THIS SIMPLE ACT OF AGREEMENT. I URGE THE PRIME MINISTER TO PROCEED FORTHWITH. LET US CONTINUE OUR DISCUSSIONS, IN WHICH ONTARIO WILL PARTICIPATE IN ALL GOOD FAITH, WITH, AT THE VERY LEAST, THE KNOWLEDGE THAT WE ARE DEALING WITH A CONSTITUTION THAT NOW RESTS IN CANADA.

THROUGHOUT THIS WEEK, WE HAVE HEARD ON A NUMBER OF OCCASIONS THE EXPRESSION, "THIS IS OUR BOTTOM LINE". WELL, WE IN ONTARIO HAVE OUR BOTTOM LINE - THE STRENGTHENING OF CANADA. LET US NOT LEAVE HERE WITHOUT ONE SMALL STEP TOWARD THAT GOAL.



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NOTES  
FOR A STATEMENT  
ON  
"POWERS OVER THE ECONOMY"  
BY  
STERLING LYON  
PREMIER OF MANITOBA  
AND  
DONALD CRAIK  
MINISTER OF FINANCE



FIRST MINISTERS' CONFERENCE ON THE CONSTITUTION  
11 SEPTEMBER 1980.

NOTES ONLY - CHECK AGAINST DELIVERY.



PRIME MINISTER:

MANITOBA SHARES THE CONCERNS THAT OTHERS HAVE EXPRESSED HERE, THAT THE EXPANSIONS YOU ARE PROPOSING IN FEDERAL POWERS OVER THE ECONOMIC LIVES OF CANADIANS, WOULD NOT BE IN THE NATIONAL INTEREST.

AND WE THINK IT IS IMPORTANT THAT CANADIANS UNDERSTAND THAT, COMPARED TO THE INCREASES IN FEDERAL POWER YOU ARE PROPOSING HERE, ALL OF THE SO-CALLED TRANSFERS OF POWERS TO THE PROVINCES WHICH YOU HAVE REFERRED TO SO OFTEN THROUGHOUT THIS CONFERENCE ARE FRANKLY INSIGNIFICANT.

BUT HAVING SAID THAT, PRIME MINISTER, WE MUST ALSO SAY THAT MANITOBA AGREES THAT THERE ARE PROBLEMS IN THE FUNCTIONING OF OUR ECONOMIC UNION. I THINK THAT OUR MAJOR DIFFERENCES WITH YOUR POSITION LIE IN OUR VIEW OF THE NATURE OF THOSE PROBLEMS, AND IN THE BEST WAY IN WHICH WE CAN BEGIN TO SOLVE THEM.

I WOULD ASK OUR MINISTER OF FINANCE, THE HONOURABLE DONALD CRAIK, TO PUT MANITOBA'S VIEWS BEFORE YOU, AND TO MAKE OUR SUGGESTIONS FOR THE WAYS OUR ELEVEN GOVERNMENTS SHOULD ADDRESS THE PROBLEMS THAT EXIST IN THIS AREA OF CONFEDERATION.



PRIME MINISTER:

MANITOBA'S CONCERNS IN THIS AREA ARE TWO-FOLD.

FIRST, WE ARE CONCERNED, AS WE KNOW OTHER PROVINCES ARE, THAT THE TREMENDOUS INCREASES YOU ARE PROPOSING IN FEDERAL POWERS OVER THE ECONOMIC LIVES OF CANADIANS WOULD FUNDAMENTALLY REDUCE THE ABILITY OF CANADIANS TO ACT AFFIRMATIVELY THROUGH THEIR PROVINCIAL GOVERNMENTS, AND CO-OPERATIVELY WITHIN THEIR REGIONS, TO ACHIEVE THE KINDS OF ECONOMIC ROLES THEY ASPIRE TO FOR THEIR PROVINCES AND THEIR REGIONS WITHIN CONFEDERATION.

BUT HAVING SAID THAT, SIR, I MUST ALSO SAY THAT MANITOBA IS DEEPLY CONCERNED ABOUT THE FUNCTIONING OF OUR CANADIAN ECONOMIC UNION, AND ABOUT WHAT APPEARS TO US TO BE AN UNFORTUNATE TENDENCY AWAY FROM CO-OPERATION AMONG GOVERNMENTS ON ECONOMIC MATTERS ON A NATIONWIDE BASIS.

WE ARE FRANKLY CONCERNED ABOUT THE SO-CALLED BARRIERS TO TRADE THAT ARE GROWING UP BETWEEN PROVINCES.



LIKE OUR SISTER PROVINCE OF ONTARIO, MANITOBA IS A MANUFACTURING PROVINCE. WE DEPEND ON FREE AND FAIR ACCESS TO THE MARKETS OF OUR SISTER PROVINCES FOR OUR OWN PROSPERITY. ACCESS TO THE MARKETS OF OUR SISTER PROVINCES IN WESTERN CANADA, IN PARTICULAR, ARE THE KEY MECHANISM WHEREBY WE SHARE IN THE GROWING PROSPERITY OF OUR REGION OF CANADA.

ON A BROADER BASIS, WE BELIEVE THAT MANITOBA INDUSTRIES ARE CAPABLE OF GROWING AND COMPETING SUCCESSFULLY IN MARKETS ACROSS CANADA, IF THEY ARE PERMITTED TO DO SO FREELY. AND THAT IS NOT THE CASE AT THE PRESENT TIME.

BUT WE BELIEVE THAT THE SO-CALLED BARRIERS TO TRADE THAT CONCERN US AS MUCH AS ANY PROVINCE ARE NOT THE SOLE, OR EVEN THE PRIMARY PROBLEM WITHIN OUR ECONOMIC UNION. IN A SENSE, THESE BARRIERS ARE MERELY SYMPTOMS OF THE GREATER PROBLEM, WHICH IS THAT WE HAVE NOT ESTABLISHED THE HABIT OF, OR MECHANISMS FOR, HARMONIZING THE ECONOMIC AND INDUSTRIAL DEVELOPMENT EFFORTS OF OUR ELEVEN GOVERNMENTS.

WITH RESPECT, SIR, WE WOULD SUGGEST THAT IF WE ARE REALLY COMMITTED TO IMPROVING THE FUNCTIONING OF OUR ECONOMIC UNION, THAT IS THE PROBLEM WE SHOULD BE ADDRESSING.



LET US SPEAK FOR JUST A MOMENT ABOUT BARRIERS TO TRADE, PRIME MINISTER. BECAUSE OUR EXPERIENCE WITHIN CONFEDERATION HAS BEEN DIFFERENT FROM THAT OF OUR SISTER MANUFACTURING PROVINCE OF ONTARIO, WE HAVE A DIFFERENT UNDERSTANDING OF THESE SO-CALLED BARRIERS, OF HOW AND WHY THEY EVOLVED, AND OF THE BEST WAYS IN WHICH WE, AS GOVERNMENTS REPRESENTING ALL OF THE PEOPLE OF CANADA, SHOULD CO-OPERATE TO MAKE THEM OBSOLETE WHERE THEY ARE HARMFUL TO OUR SHARED AND OUR SEVERAL INTERESTS.

IT IS IMPORTANT TO BEGIN BY UNDERSTANDING THAT VIRTUALLY EVERY ONE OF THOSE THINGS WE DESCRIBE AS BARRIERS TO TRADE BEGAN AS POSITIVE AND AFFIRMATIVE ECONOMIC DEVELOPMENT EFFORTS ON BEHALF OF THE PEOPLE OF SPECIFIC PROVINCES OR REGIONS - EFFORTS TO ACHIEVE DIFFERENT AND BROADER ECONOMIC ROLES FOR THEMSELVES THAN SEEMED TO HAVE BEEN ASSIGNED TO THEM BY FEDERAL POLICY.

IN THE WEST, WE HAVE WORKED TO BECOME MORE THAN SUPPLIERS OF RESOURCES AND MARKETS FOR CENTRAL CANADA - AN ECONOMIC ROLE WHICH, THROUGH TARIFF AND FREIGHT RATE POLICIES, WAS, IN EFFECT, ASSIGNED TO US UNDER FEDERAL POLICY - MANITOBA'S CASE WHEN WE JOINED CONFEDERATION, ONE HUNDRED AND TEN YEARS AGO.



WE HAVE BEEN STRIVING TO BE ABLE TO OFFER OUR PEOPLE THAT SAME BREADTH AND DIVERSITY OF OPPORTUNITY THAT PEOPLE IN CENTRAL CANADA HAVE BEEN ABLE TO TAKE FOR GRANTED OVER THE YEARS.

AND WE BELIEVE THAT IS TRUE, AS WELL, OF OUR SISTER PROVINCES IN ATLANTIC CANADA. THE KINDS OF EFFORTS THAT PRINCE EDWARD ISLAND HAS MADE TO PROTECT ITS LAND, OR THAT NEWFOUNDLAND IS MAKING AT LEAST IN THE EARLY YEARS OF ITS DEVELOPING ENERGY INDUSTRY, TO ASSURE THAT ITS OWN PEOPLE HAVE A REAL OPPORTUNITY TO COMPETE FOR THE EMPLOYMENT THAT WILL - WE ALL HOPE, BE CREATED IN THE INDUSTRY, CAN BE ARGUED TO BE AFFIRMATIVE REFLECTIONS OF THE WISHES AND THE ASPIRATIONS OF THE PEOPLE OF THEIR PROVINCES.

NOW, IT IS TRUE THAT MANY OF THESE ACTIONS HAVE HAD THE EFFECT OF CREATING BARRIERS TO THE FREE MOVEMENT OF GOODS, PEOPLE, AND CAPITAL WITHIN CANADA.

BUT BECAUSE THEY DO ADDRESS LEGITIMATE REGIONAL SOCIAL AND ECONOMIC CONCERNS, I DO NOT THINK WE CAN REALISTICALLY SUGGEST THAT THEY CAN BE REMOVED - AND REPLACED WITH NO EQUIVALENT MECHANISM TO ADDRESS THOSE SAME CONCERNS AND ACHIEVE THOSE SAME OBJECTIVES



THE NEED, PRIME MINISTER, IS NOT SIMPLY TO REMOVE BARRIERS. THE NEED IS TO DEVISE BETTER, MORE CO-OPERATIVE WAYS IN WHICH PROVINCES AND REGIONS CAN WORK TOGETHER, WITH THE LEADERSHIP AND SUPPORT OF THE FEDERAL GOVERNMENT, TO ACHIEVE THEIR ECONOMIC GOALS, IN A WAY THAT MAKES SUCH BARRIERS UNNECESSARY.

BUT WE MUST DO THAT, SIR, WITHOUT REMOVING THE ABILITY OF PEOPLE IN ANY PART OF THIS COUNTRY TO USE THEIR PROVINCIAL GOVERNMENTS IN AN AFFIRMATIVE WAY TO ACHIEVE THEIR OBJECTIVES. AND YOUR PROPOSALS FOR INCREASED FEDERAL POWER OVER THE ECONOMIC LIVES OF CANADIANS WOULD IMPAIR THAT ABILITY.

AND SO, WE COULD AGREE TO CONSIDER SASKATCHEWAN'S SUGGESTION FOR A GENERAL COMMITMENT TO THE MAINTENANCE AND ENHANCEMENT OF OUR ECONOMIC UNION. BUT I SHOULD STRESS, SIR, THAT WE SEE THE CONCEPT OF AN ECONOMIC UNION AS BEING VERY MUCH BROADER THAN SIMPLY THE MAINTENANCE OF MARKET ACCESS: FOR THE GREATER PART OF OUR HISTORY, THE INDUSTRIES OF CENTRAL CANADA HAVE ENJOYED FREE AND PROTECTED ACCESS TO ALL OUR MARKETS, BUT OUR ECONOMIC UNION HAS NOT WORKED TO ACHIEVE THE LEGITIMATE EXPECTATIONS



OF PEOPLE IN OTHER PARTS OF CANADA.

BUT IN ADDITION TO SUCH A CONSTITUTIONAL COMMITMENT TO THE CONCEPT, PRIME MINISTER, MANITOBA IS OF THE OPINION THAT OUR ELEVEN GOVERNMENTS MUST TAKE FIRM AND TANGIBLE ACTIONS TO BRING THAT COMMITMENT TO LIFE.

AT THE PREMIERS' CONFERENCE IN WINNIPEG LAST MONTH, ALL TEN PREMIERS AGREED THAT WE SHOULD BEGIN WITH A JOINT MEETING OF FEDERAL AND PROVINCIAL MINISTERS OF FINANCE AND ECONOMIC DEVELOPMENT TO LOOK AT THE KEY AREAS OF GOVERNMENT PROCUREMENT, CAPITAL PROJECTS, AND RESEARCH AND DEVELOPMENT - TO BEGIN TO FIND THE BETTER AND MORE CO-OPERATIVE WAYS OF ACHIEVING OBJECTIVES THAT ARE NEEDED.

IN HIS OPENING STATEMENT, MY PREMIER GAVE THE EXAMPLE OF OUR OWN PROPOSED HYDRO ELECTRIC DEVELOPMENTS, AND HOW THESE HUGE CAPITAL PROJECTS COULD BE USED AS BROAD INSTRUMENTS OF INDUSTRIAL DEVELOPMENT FOR A NUMBER OF PROVINCES.



AND THERE ARE OTHER EXAMPLES THAT ALREADY EXIST. THE PROVINCE OF ONTARIO HAS TAKEN AN IMPORTANT INITIATIVE TO ACHIEVE INTER-PROVINCIAL CO-OPERATION IN THE HEALTH CARE AND MEDICAL PRODUCTS INDUSTRY - AN INITIATIVE THAT HAS ENJOYED THE SUPPORT OF ALL NINE OTHER PROVINCES, AND THE VERY MATERIAL SUPPORT OF A FEDERAL CROWN CORPORATION, THE CANADIAN DEVELOPMENT CORPORATION.

TO OUR MIND, THAT IS THE WAY TO BEGIN. TO OUR MIND, AS MY PREMIER EXPRESSED IT IN WINNIPEG IN AUGUST, OUR EFFORT SHOULD NOT BE, IN THE FIRST INSTANCE, TO MAKE ALL OF THE SO-CALLED BARRIERS TO TRADE ILLEGAL; WE SHOULD BEGIN TO WORK TO MAKE THEM OBSOLETE.

THE PROBLEM YOU HAVE IDENTIFIED IN THE FUNCTIONING OF OUR ECONOMIC UNION IS A REAL PROBLEM, PRIME MINISTER, AND WE SHARE YOUR CONCERN ABOUT IT.

BUT THE SOLUTION YOU HAVE PROPOSED, AND THE POTENTIALLY VERY SIGNIFICANT INCREASE IN FEDERAL POWERS OVER THE ECONOMIC LIVES OF CANADIANS THAT YOU HAVE SUGGESTED, MAY BE A GREAT DEAL WORSE THAN THE PROBLEM, AND COULD TREMENDOUSLY REDUCE THE ABILITY OF PEOPLE IN ANY PART OF THIS COUNTRY TO MAKE THEIR OWN CHOICES -  
AND TO MAKE THEIR OWN EFFORTS -



WITH RESPECT TO THEIR ECONOMIC LIVES.

I BELIEVE THE ALTERNATIVE APPROACH WE ARE SUGGESTING WILL SERVE THE INTERESTS OF MANUFACTURING PROVINCES LIKE MANITOBA AND ONTARIO, WITHOUT IN THE PROCESS SACRIFICING THE INTERESTS OF OTHER PARTS OF THIS COUNTRY.

I REPEAT: MANITOBA NEEDS MARKET ACCESS, SIR. BUT WE BELIEVE THE WAY TO ACHIEVE IT IS TO WORK TO ESTABLISH TRUE NATIONWIDE CO-OPERATION, THROUGH THE KIND OF ONGOING NEGOTIATION AND HARMONIZATION OF ECONOMIC POLICIES WE ARE RECOMMENDING HERE.

WE WOULD OPPOSE THE SUGGESTED AMENDMENTS TO SECTIONS 91(2) AND 121 OF THE BNA ACT - AT LEAST AT THIS TIME. LET US FIRST WORK TO ACHIEVE THE ESSENCE OF A REAL ECONOMIC UNION - CO-OPERATION.

IT IS IMPORTANT FOR CANADIANS TO UNDERSTAND THAT OUR ELEVEN GOVERNMENTS HAVE NEVER MET FOR THE SPECIFIC PURPOSE OF FINDING PRACTICAL SOLUTIONS TO THESE PROBLEMS. IN THE ABSENCE OF ANY SUCH MEETING, OF ANY SUCH EFFORT TO ACHIEVE THESE THINGS BY AGREEMENT, THERE CAN BE NO JUSTIFICATION FOR THE KIND OF DRASTIC AND FUNDAMENTAL CHANGE YOU ARE PROPOSING IN OUR CONSTITUTION.



ONTARIO DRAFT PREAMBLE

Proud of our heritage,

Confident of our future,

Acting of our sovereign will under God,

We, as Canadians,

Declare our common purposes:

To establish the rule of justice

To respect the dignity and worth of persons, families  
and communities

To protect their rights in free association

To foster the contribution of our native people and  
peoples from many lands towards our common destiny

To honour each sex, race, colour and creed as equal

To seek freedom from want for all of our people

To preserve and share the wealth of the land and  
To defend for the freedom and enjoyment of future generations

and

To seek peace, through justice, in the world at large

In recognition of these purposes

We Therefore

Establish institutions of a democratic, parliamentary,  
constitutional monarchy

Choose federalism as the system for sharing government  
best suited to the achievement of unity in diversity

Recognize our fundamental linguistic dualism, and  
declare English and French to be our official languages

and

Proclaim our Constitution



NOTES FOR AN ADDRESS BY

THE HONOURABLE JOHN M. BUCHANAN, Q.C., M.L.A.

PREMIER OF NOVA SCOTIA



CLOSING STATEMENT

CONSTITUTIONAL CONFERENCE

OTTAWA, ONTARIO

SEPTEMBER 13<sup>TH</sup>, 1980



PRIME MINISTER...MY FELLOW FIRST MINISTERS:

DURING THE PAST FEW DAYS--SPECIFICALLY THE LAST FIVE DAYS--I HAVE BEEN PERSONALLY IMPRESSED, AS THE COUNTRY HAS BEEN IMPRESSED, I BELIEVE, BY THE HIGH QUALITY OF THOUGHT EXPRESSED BY EACH OF YOU--MY FEDERAL AND PROVINCIAL COLLEAGUES--AS WE FOCUSED ATTENTION ON EACH OF THE SUBJECTS WHICH HAVE COME BEFORE US. I WANT TO, AT THE OUTSET, CONGRATULATE EACH AND EVERY OF THE PARTICIPANTS FOR YOUR SINCERITY AND YOUR OBVIOUS DETERMINATION TO REPRESENT CANADIANS. IT HAS BEEN AN HONOUR FOR ME AS A PROVINCIAL PREMIER, TO SIT AT THIS TABLE WITH YOU. IN KNOWLEDGE THERE IS UNDERSTANDING AND IN UNDERSTANDING THERE IS INCREASED HOPE FOR THE FUTURE.

I COME FROM A PROVINCE WHICH IS STEEPED IN PARLIAMENTARY TRADITION, BEING THE SEAT OF THE FIRST REPRESENTATIVE AND RESPONSIBLE GOVERNMENT IN CANADA. IT IS THE HOME OF PEOPLE WHO ARE STRONG AND FIRM IN THEIR CONVICTIONS, MODERATE IN OUTLOOK WHEN IT COMES TO OUR VIEW OF CANADA. NOVA SCOTIANS ARE RELIABLE, DEPENDABLE AND LOYAL, AND IN MY VIEW, THE VERY REAL RESOURCE OF OUR PROVINCE.

HOWEVER, WE ARE EQUALLY DETERMINED THAT MODERATION IN THE CONTEXT OF CANADA MEANS EQUALITY AND I USE THAT TERM WITH RESPECT TO MATERIAL BENEFITS THROUGHOUT THE COUNTRY AND ALSO NATIONAL POLICIES WITH RESPECT TO NATIONAL RESOURCES. I HOLD THE VIEW THAT MAJOR POLICIES WHICH HAVE BEEN DEVELOPED BY PAST FEDERAL GOVERNMENTS HAVE NOT ALWAYS SERVED MY PROVINCE IN SUCH A WAY AS TO PROVIDE REASONABLE ECONOMIC OPPORTUNITIES TO THE PEOPLE OF NOVA SCOTIA AND THE KIND OF EQUALITY WHICH I HAVE REFERRED TO.

I SAY WITH CONVICTION THAT MY DECLARATIONS AND THOSE OF MY MINISTERS IN THESE NEGOTIATIONS, WERE ALWAYS EXPRESSED IN GOOD FAITH. THE DECLARATIONS WERE WHAT WE TRULY BELIEVED TO BE A CONSENSUS OF THE OPINIONS, HOPES AND ASPIRATIONS OF THE PEOPLE OF MY PROVINCE.

IN MY OPENING REMARKS TO THIS CONFERENCE, I DECLARED MY OPTIMISM THAT WE WOULD BE ABLE TO ACHIEVE A MODEST PACKAGE OF CONSTITUTIONAL CHANGE. THIS OPTIMISM RESULTED FROM THE ATTITUDE OF MY PROVINCIAL COLLEAGUES WHO OVER THE LAST YEAR INDICATED THEIR WILLINGNESS TO COME TO A CONSENSUS ON MANY OF THE ISSUES. THIS HAS BEEN PARTICULARLY EVIDENT SINCE JUNE 9TH PAST. AT WINNIPEG, IN AN EFFORT TO ENSURE SUCCESS THIS WEEK, MANY PRIOR POSITIONS OF FEBRUARY 1979 WERE MODERATED AS WE MOVED POSITIVELY TO A CONSENSUS ON MANY ITEMS ON THE AGENDA.

THIS WAS IN SHARP CONTRAST TO THE POSITIONS TAKEN AT THE CONCLUSION OF THE CONFERENCE IN FEBRUARY OF 1979.

THE OPTIMISTIC REPORTS I RECEIVED FROM MY CHAIRMAN AND THE MEMBERS OF THE CONTINUING COMMITTEE REPRESENTING NOVA SCOTIA GAVE ME FURTHER REASON TO BELIEVE THAT MANY PROVINCIAL POSITIONS WERE BEING DIRECTED TOWARDS CONSENSUS.

MY MINISTERS ALSO INDICATED CLEARLY TO ME THAT THERE APPEARED TO BE SOME REAL WILLINGNESS ON THE PART OF FEDERAL MINISTERS AND OFFICIALS TO MOVE IN THE SAME DIRECTION.

I BELIEVE IT FAIR AND RESPONSIBLE TO SAY THAT OUR POSITION--OUR NOVA SCOTIA POSITION--THROUGHOUT THE SUMMER AND DURING THIS LAST WEEK, WAS ONE OF A DESIRE TO COME TO ACCOMMODATION SO THAT WE MIGHT ACHIEVE THE DESIRED RESULT.

THIS IS WHY I CAME TO THE CONFERENCE WITH A FEELING OF OPTIMISM.

IT WAS THAT OPTIMISM WHICH I EXPRESSED IN MY OPENING STATEMENT. THROUGHOUT THE WEEK THERE WAS NO DOUBT IN MY MIND THAT MOST OF THE PROVINCIAL PREMIERS ALSO INDICATED CLEARLY THAT THEY WERE PREPARED TO MOVE FURTHER TO ENSURE THAT THERE WOULD BE, AT THE VERY LEAST, A MODEST PACKAGE OF AGREEMENT, PROVIDED THE GOVERNMENT OF CANADA WAS PREPARED TO ALSO MAKE SUFFICIENT ACCOMMODATION IN AREAS OF ECONOMIC CONCERN.

MR. PRIME MINISTER, IT IS AT FIRST BLUSH FRUSTRATING THAT THERE WAS NOT UNANIMITY, BUT THERE CERTAINLY WAS CONSENSUS ON MANY ITEMS ON THE AGENDA. WE WERE WITHIN REACH OF AN AGREEMENT, BUT IT HAS NOT YET BEEN ACHIEVED.

HOWEVER, THE CONFERENCE WAS UNABLE TO REACH GREATER AND MORE SUBSTANTIVE PROGRESS AND SUCCESS AND AGREEMENT.

HAVING SAID THAT, AND EVEN THOUGH I AM DISAPPOINTED THE CONFERENCE WAS NOT SUCCESSFUL IN TERMS OF ARRIVING AT A PACKAGE OF CONSTITUTIONAL CHANGE THAT WE HAD HOPED FOR, WE HAVE BEEN ABLE, I BELIEVE MR. PRIME MINISTER, TO COME CLOSER TO AGREEMENT THAN AT ANY TIME BEFORE. CERTAINLY WE ARE MUCH CLOSER TO AGREEMENT, IN MY HUMBLE OPINION, THAN IN THE 1979 CONFERENCE.

WE OUGHT TO NOW ALL REFLECT EARNESTLY ON WHAT HAS TAKEN PLACE AT THIS CONFERENCE, AND WHAT HAS NOT TAKEN PLACE. I BELIEVE THAT, WITH THAT CAREFUL REVIEW AND A FURTHER EFFORT AT FAIR AND REASONABLE ACCOMMODATION, WITH RENEWED CONVERSATIONS BY MINISTERS, AT AN EARLY DATE, WE CAN ACHIEVE THE AGREEMENT THAT HAS ELUDED US FOR SO LONG A TIME.

DURING THIS CONFERENCE, WE SPOKE ABOUT ECONOMIC CONCERNS THROUGHOUT VARIOUS PARTS OF THE COUNTRY AND THAT IS CERTAINLY AS IT SHOULD BE IN ANY CONFERENCE-- CONSTITUTIONAL OR OTHERWISE.

THIS COUNTRY FROM PACIFIC TO ATLANTIC IS A NATION OF ECONOMIC REGIONS, EACH WITH ITS SEPARATE AND DISTINCT PROBLEMS AND CONCERNS. THE PROVINCE I REPRESENT MAY BE FACING AND DEALING WITH MORE ECONOMIC PROBLEMS THAN MANY OTHERS.

MY VIEW OF CANADA REQUIRES THAT THERE BE A STRONG FEDERAL PRESENCE. THIS IS AN ABSOLUTE NECESSITY IN OUR SYSTEM IN ORDER TO DEAL WITH NATIONAL AND REGIONAL ISSUES AND PROBLEMS--WITH A WIDE TAXING BASE. WHILE IN A TRUE FEDERATION, PROVINCES MUST BE STRONG IN ORDER TO DISCHARGE SPECIFIC PROVINCIAL RESPONSIBILITIES AND PRIORITIES SO THAT BALANCE CAN BE ACHIEVED.

I WANT TO POINT OUT AGAIN THAT THE NOVA SCOTIA EXPECTATIONS OF 1867 HAVE NOT AS YET BEEN MET. I POINT OUT AGAIN THAT WE DO, I BELIEVE, HAVE AN OPPORTUNITY IN THE NEAR FUTURE OF MEETING THOSE EXPECTATIONS THROUGH THE PROPER DEVELOPMENT OF OUR OWN RESOURCES AND WITH THE CAUTIOUS OPTIMISM WHICH WE EXPRESS FOR OIL AND GAS EXPLORATION AND COMMERCIAL DEVELOPMENT OFF THE COAST OF OUR PROVINCE.

MR. PRIME MINISTER, WE WILL SINCERELY, CONTINUE NEGOTIATIONS WITH YOUR GOVERNMENT TO ACHIEVE AN AGREEMENT WHICH WILL MAXIMIZE ECONOMIC BENEFITS FOR THE CITIZENS OF NOVA SCOTIA AND OBTAIN THOSE CONTROLS WHICH WE BELIEVE WILL ENABLE US TO MANAGE AND DEVELOP THE RESOURCE WITH RESPECT TO PROVINCIAL POLICIES AND PRIORITIES.

MY COLLEAGUES, I REFER NOW TO MY OPENING STATEMENT OF MONDAY LAST AND WHAT TO ME SEEMS CRUCIAL TO THESE AND ANY FUTURE CONSTITUTIONAL TALKS: IT IS THE WILL TO BRING ABOUT POSITIVE RESULTS. THIS WILL IS MADE UP OF THE MANY AND UNIQUELY CANADIAN ATTRIBUTES, SUCH AS CONCILIATION, FORTHRIGHTNESS AND CONCERN FOR OUR COUNTRY.

YOU WILL RECALL THAT THE DELEGATES WHO MET SOME 116 YEARS AGO FROM CANADA, NEW BRUNSWICK, P.E.I. AND NOVA SCOTIA STRESSED THAT THE REQUISITE TO OVERCOME DIFFICULTIES WAS A STRONG WILL AND A GOOD HEART, AND SO DID MANY FIRST MINISTERS HERE. I QUOTE AGAIN THE WORDS OF GEORGE ETIENNE CARTIER, ATTORNEY GENERAL FOR CANADA EAST, WHO SAID, "ALL THAT IS REQUISITE TO OVERCOME DIFFICULTIES IS A STRONG WILL AND A GOOD HEART".

WE MUST ASK WHAT WAS OUR INTENTION OVER THE PAST FEW WEEKS AND THE PAST NUMBER OF MONTHS? I HAVE NO DIFFICULTY IN SAYING THAT MY INTENTION WAS, AND REMAINS, POSITIVE IN EXPRESSING THE NEEDS AND DESIRES AND ASPIRATIONS OF THE PEOPLE OF NOVA SCOTIA SO THAT THEY WILL HAVE OPPORTUNITIES LIKE ALL OTHER CANADIANS TO WORK AND ENJOY EQUAL BENEFITS AND RIGHTS WITHIN A UNITED CANADA.

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IT IS MY OPINION THAT DISCUSSIONS HAVE BEEN ON A VERY HIGH LEVEL--FRANK, OPEN AND A LESSON IN DEMOCRACY FOR THE REST OF THE WORLD. I NOW UNDERSTAND AND EVEN THOUGH NOT AGREEING, APPRECIATE THE DIVERGENT VIEWS ON THE KIND OF CANADA BASICALLY AND SINCERELY EXPRESSED BY THE TWO LEVELS OF GOVERNMENT. I AM A CANADIAN. I BELIEVE THAT THERE CAN BE A SUFFICIENT CLOSING OF THE GAP BETWEEN THOSE VIEWS TO RENEW FEDERALISM AND THE VISION OF CANADA ENUNCIATED IN 1867.

BEFORE CLOSING, I WANT TO EXPRESS MY SINCEREST THANKS TO ALL PARTICIPANTS AT THIS CONFERENCE FOR THEIR HARD WORK AND DEDICATION IN THESE NEGOTIATIONS.

CANADA TODAY IS OF IMMEDIATE CONCERN--AND CANADA TOMORROW IS OUR OVERRIDING RESPONSIBILITY. I SINCERELY HOPE THAT OUR CONFIDENCE IN THE FUTURE AND OUR TRUST IN ONE ANOTHER HAS NOT IN ANY WAY BEEN DIMINISHED. AT THE BEGINNING OF THIS CONFERENCE, I MADE THE POINT MOST EMPHATICALLY, THAT "WE CAN SUCCEED IF WE HAVE THE WILL TO SUCCEED" AND I LEAVE THAT THOUGHT WITH ALL CANADIANS.

I STILL BELIEVE IT.



